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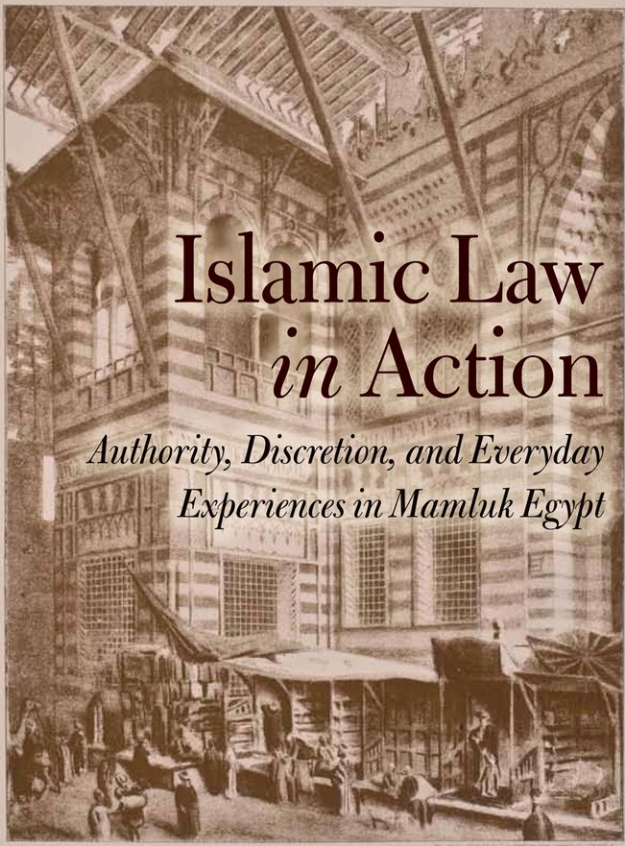

Islamic Law *in* Action

Authority, Discretion, and Everyday Experiences in Mamluk Egypt

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ISLAMIC LAW IN ACTION

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Islamic Law in Action

Authority, Discretion, and Everyday Experiences in Mamluk Egypt

KRISTEN STILT

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This book is dedicated to the memories of
Elizabeth (BJ) Warnock Fernea (1927–2008)
and
Daniel Lev (1933–2006)

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The cover image is courtesy of Documentation Center, Aga Khan Program for Islamic Architecture, Fine Arts Library, Harvard College Library, and I thank Sharon Smith at the Aga Khan Program for suggesting it to me. The image, captioned "Silk Mercers' Bazaar, Cairo," is a drawing made by R. Phené Spiers and is included in his volume *Egypt: A Series of Thirty-Six Views of Ancient and Modern Egypt* (1887). Spiers, an architect, was given a travel grant by the Royal Academy in 1865–6 to draw sites in Egypt. The description of this drawing reads "Plate XXII. Khan Khaleel. This Bazaar, the chief mart for silks, dresses, slippers, carpets, &c. in Cairo, was built by El Ashraf Khaleel in 1292 A.D., and added to in 1501 A.D. by El Ghoree, who built the portal seen on the right." By using this illustration, I intend to convey only a general sense of the architecture of one particular place in Cairo's market; I do not suggest that the individuals or even the market stalls as drawn by Spiers resemble a scene that might have been found at the same location in the Mamluk period.

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Note on transliteration, terminology, and dates

This book is designed both to be accessible to the non-specialist reader and to give the specialist reader a sufficient level of detail and precision. The system of transliteration, terminology, and dates is intended to meet these dual goals.

I give only C.E. dates when providing background information, such as the history of Cairo and Fustat in the first chapter and dates of sultanic reigns throughout. I provide both A.H. and C.E. dates, separated by a slash mark, when presenting information based on primary research, such as the dates of the cases that form the basis of Chapters 3 to 9, so that the specialist reader can situate the information in the context of other primary research without having to convert the C.E. date to the Islamic calendar.

The system of transliteration is a slightly modified version of that used by the *International Journal of Middle East Studies*. In titles of Arabic books and articles, I follow the standard convention of capitalizing the first word only, unless it is *Kitāb* (book), in which case the second word is also capitalized. Titles within titles are also capitalized according to this system, and proper names are capitalized.

Technical terms are defined the first time they appear, and then if the same term appears again sufficiently far enough from the first mention, it is defined again. A glossary and an extensive index should allow the non-specialist to quickly find needed definitions.

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Introduction

This book studies social practices involving law in the cities of Cairo and neighboring Fustat during the Mamluk period (1250–1517). From the perspective of the daily life of a typical inhabitant, a common face of the law was the *muḥtasib*, an official who was as much a part of the legal landscape as the judge or mufti.[1] Best described as an inspector of public spaces, this legal official traversed the city carrying out his duty to command right and forbid wrong. He took direction from the rulers, the sultan foremost among them, and also was guided by legal doctrine (*fiqh*) as formulated by the jurists, combining these two sources of law in one site of authority. The actions of the *muḥtasib* show the interplay between law and society on a day by day basis, including the responses of the individuals whom the official attempted to regulate.

This project grew out of a longstanding interest in the way that law operates in matters of personal and social concern, ranging from the mundane and routine to the most fundamental and consequential. The approaches to the study of law that fall broadly under the heading of "law and society" were at the root of this interest and have persistently influenced my thinking about legal history.[2] In Muslim communities historically, the legal doctrine produced by jurists (*fuqahāʾ*) clearly was relevant to the regulation of society, but, in itself, it is not sufficient to explain the social dynamics by which individuals modulated their own behavior—willingly or not. In contemporary scholarly debates about the application of Islamic law in pre-modern Muslim societies, the topic is often cast in terms of whether doctrinal rules were applied in practice, calling for a yes or no answer.[3] This line of inquiry

[1] For an introduction to the position of judge, see Masud, Peters, and Powers, "Qāḍīs and Their Courts: An Historical Survey," in idem (eds.), *Dispensing Justice in Islam*, 1–44; Hallaq, *The Origins and Evolution of Islamic Law*, 57–101. For an introduction to the position of mufti, see Masud, Messick, and Powers, "Muftis, Fatwas, and Islamic Legal Interpretation," in idem (eds.), *Islamic Legal Interpretation*, 3–32.

[2] For a good introduction to this vast and diverse field, see Sarat (ed.), *The Blackwell Companion to Law and Society*.

[3] This line of questioning is typified by Joseph Schacht's claim in 1964 that the Sharia's "hold was strongest on the law of the family (marriage, divorce, maintenance, etc.), or inheritance, and of pious foundations (*wakf*); it was weakest, and in some respects even non-existent, on penal law, taxation, constitutional law, and the law of war; and the law of contracts and obligations stands in the middle." Schacht, *An Introduction to Islamic Law*, 76. Schacht's work followed in the line of, and in part was intended as a correction to, the study of Islamic law by western scholars that began in earnest at the end of the nineteenth century, as summarized in Powers, *Law, Society, and Culture in the Maghrib, 1300–1500*, 1–3. Subsequent to Schacht, work in the field of Islamic legal history attempted to show that legal doctrine was applied and used in practice. Abraham Udovitch in 1970 compared legal writings on

may be able to indicate something about the relevance of doctrine in society, but it does not address the broader topic of the social dynamics of law more generally.

I am interested in a set of questions beyond whether doctrinal rules were actually applied, questions that begin with the premise that in any society the functioning of law is far more complicated than choices by legal actors to use or ignore legal texts. My aim is to widen the scope of inquiry to include not only the role and relevance of doctrine, but also questions such as: Which officials represented the force of law in society? What kinds of rules did they rely upon, and what were the sources of these rules? How did their personal backgrounds and preferences affect their work? How did the populace respond to legal application or enforcement, and what accounts for their different reactions to different officials, on different topics, and at different places and times?

Determining how to address these kinds of questions, however, was not so simple. When beginning this project, I hoped to focus on judges and judicial decisions. Scholars of the Ottoman Empire have made remarkable use of court records, but such documents are scarce for earlier Islamic history, which was my period of interest, and I was seeking a large archive.[4] Thus, I had to look beyond the most prominent types of actors and sources. Reading historical chronicles from the Mamluk era in Egypt, which exist in an abundance not seen for prior periods, guided me to the office of the *muḥtasib*. Unlike a judge, the *muḥtasib* did not have to wait for a claim to be brought before he could act: he patrolled the public spaces and had the discretion to take whatever action he thought best to stop wrongful acts or enforce obligatory ones. The *muḥtasib* could not, as a practical matter, deal with every infraction that might take place in the public sphere on a given day, but had to make choices and set priorities. Further, the sources that deal with the *muḥtasib* allow for a sense of how each *muḥtasib*'s individual background affected what he did and, in some cases, how the people responded. They also provide details of the social, political, and economic contexts of any particular event involving this official. As a result, the historical materials related to the office of the *muḥtasib* in the Mamluk period yielded a rich and detailed archive that was even fuller than I could have imagined initially.

partnerships and corporations from the late eighth and early ninth centuries with documentary evidence of daily practice of commercial relations in the eleventh and twelfth centuries. Udovitch, *Partnership and Profit in Medieval Islam*. His conclusions suggest that several centuries after the legal texts were written, merchants were operating at least in part in ways that bore a relationship to the legal doctrine. Jeanette Wakin's 1972 study compared model contracts as discussed by the scholar al-Ṭaḥāwī (d. ca. 933) with contracts that were used. Wakin, *The Function of Documents in Islamic Law*. The survey of the field of Islamic law and society by Stephen Humphreys reflects the state of this literature as of 1991. Humphreys, *Islamic History*, 209–227. For a recent effort to show the correlation between doctrinal rules of the Mālikī school and the opinions of Mālikī muftis, see Fadel, "Adjudication in the Mālikī *Madhhab*."

[4] The Mamluk-era collection at the Ḥaram al-Sharīf in Jerusalem, which includes some court records mainly from the fourteenth century, is a notable exception as far as is currently known. See Little, *A Catalogue of the Islamic Documents from al-Ḥaram aš-Šarīf in Jerusalem*. For examples of what kind of research can be done with these court records, see Müller, "Settling Litigation Without Judgment."

One case discussed in this book illustrates the level of social detail available about the *muḥtasib*'s practices and highlights the kinds of questions that are suggested by the sources. In 1422, Cairo and Fustat were decorated in preparation for the elaborate annual pilgrimage caravan that departed from the Citadel and passed through the city streets before heading off to the Arabian peninsula. The *muḥtasib* of Cairo announced that women would not be permitted to stay out all night in the central marketplace, which they had typically done in order to stake out a good view of the caravan that would pass through Cairo the next day. He made this determination because in the past, inappropriate behavior had taken place between men and women during these camp-outs. While the women initially complied with the *muḥtasib*'s announcement, they soon headed out to claim their spots in the marketplace, because he was not vigilant in enforcing his order. This small piece of historical evidence both invites and allows an investigation of several questions: Why did this *muḥtasib* bar women's presence altogether rather than only the alleged objectionable activities? Upon what sources of law did he base his decision? Why did he forbid the women and not the men? Why did the women, or at least some of them, defy his order, and how did they decide that they could safely do so without facing punishment?

A study focused on this particular official also offers important insights into another topic in Islamic legal history: sources of legal authority. The position of *muḥtasib* was connected to legal doctrine and to the jurists, whose rules formed one source of guidance in the official's work, while at the same time, the position was connected to the sultan, who appointed and dismissed the *muḥtasib*s and also gave orders to them from time to time during their tenures. In terms of constitutional structure, these two sets of influences correspond to two fundamental concepts of authority: the authority of doctrine, associated with the jurists who formulated it, and the authority of policy-based decisions (*siyāsa*), associated with the rulers. The *muḥtasib* was guided by and responsible to both sources of authority, and the historical materials I study in this book show how these influences actually manifested themselves on a daily basis, allowing for a sense of how these two sources cooperated or competed through this official. In some cases, the jurists or the sultan personally took an interest in the *muḥtasib*'s activities, playing out through him their own sense of what rules should be applied and the jurisdictional boundaries between their spheres of influence.

This book, then, takes up two main and related issues: the dynamics of law and society at the hands of the *muḥtasib* and the sources of legal authority that influenced him. In terms of the first, I seek to discover for what, when, and why he punished people or required that they conform their behavior to his orders, and when and why he chose to pass over wrongful acts. Sometimes sheer pressure from an official of the sultanate influenced the *muḥtasib* to take an action, while in other cases, the *muḥtasib* struggled to apply a rule of doctrine as he understood it despite such influence. Sometimes his personal background or ambition affected how he acted. As for those individuals whose behavior the *muḥtasib* was attempting to regulate, they also made choices—to comply or resist, or, like the caravan watchers, to comply initially while the *muḥtasib*'s attention was focused on the matter and

then to return to their front-row seats in the marketplace as soon as they thought he was no longer watching.

Regarding sources of authority, I show how policy concerns and doctrine interacted, cooperated, and competed. Modern studies have justifiably concluded that jurists and rulers recognized the mutual need for the other—their relationship was "symbiotic."[5] But this does not mean that they had clear jurisdictions that were well recognized—quite the contrary, they each sought to extend the reach of their own notion of law, even at the expense of the other when they disagreed. The *muḥtasib* was influenced by both sources, sometimes in very immediate and tangible ways, allowing for a study of the dynamics between the rulers and jurists as prompted by actions involving the *muḥtasib*, which could create a triangular relationship. I am able to show the dynamics of these jurisdictional struggles and in particular the extent to which both jurists and rulers took an interest in the full spectrum of social regulation. The sultans involved themselves in topics that had elaborate doctrinal rules, and jurists concerned themselves with matters of broader social policy, each based on their own interests. As a result, inhabitants of Cairo and Fustat were governed by both sources in all aspects of public life.

Finally, while engaged in this historical project on the *muḥtasib*, I came to see more clearly how Islamic legal history is used in contemporary debates over the role of Islamic law in modern societies. For example, advocates for the application of Islamic law today often refer to (an idealized) Islamic history as a model for emulation. Their arguments fail to acknowledge that we actually have very little understanding of the historical experience of Islamic law, especially for the pre-Ottoman period. Lacking such knowledge, the notion of historical precedent stands as a blank slate upon which various visions can be projected in the service of any particular project. This book adds to our very limited understanding of the functioning of Islamic law in a particular location and time, adding to a still largely empty field of socio-legal history.

Studies of Islamic legal history

Scholars of Islamic history have only begun to study the lived experience of the law, in which legal rules intersect with social, political, and economic factors to produce context-specific events. Most of this kind of work uses court records and fatwas (the legal opinions of muftis) as its sources for the results of legal decision-making.[6] Research based on court records has come mainly from historians of the Ottoman

[5] Lev, "Symbiotic Relations."

[6] An important exception to the use of court record- and fatwa-based research is Roy Mottahedeh's *Loyalty and Leadership in an Early Islamic Society* (first published in 1980), in which he studied ways in which societies in western Iran and southern Iraq in the tenth and eleventh centuries C.E. formed their own social structures at a time when "the weakness of government threw society back on its own resources" (p. 39). His interest was not in formal legal institutions but rather in how society developed mechanisms of regulation through "self-renewing patterns of loyalty and of leadership." Ibid.

Empire, due to the wealth of these records that have survived from that period.[7] Leslie Peirce studied the court records of the Ottoman provincial capital of Aintab from 1540–1541 alongside doctrine and sultanic law to "flesh out the socio-legal culture in which all were operating, a culture in which normative law responded to the messy complexity of real life, the judge considered each case on its individual merits but in reference to normative law, and individuals strategized by drawing on local knowledge of the meaning and mechanics of legal rules and processes."[8] Boğaç Ergene examined the Islamic courts in Ottoman Anatolia in the late seventeenth and early eighteenth centuries with a focus on the place of these courts in Ottoman provincial life and on the relationship between the courts and the people of the two sub-provinces he studied. He concluded that "the court records attribute a rule-oriented character to judicial processes" while the courts also "had the ability to appropriate more socially conciliatory modes of dispute management, when this was deemed necessary. This flexibility is consistent with my claim in this book that the Ottoman courts were responsive to social, political, and cultural pressures in their localities."[9]

Fatwas have also been used as a source for socio-legal history. Two prominent examples illustrate the strengths and limits of fatwa-based studies. David Powers examined opinions from the *Kitāb al-Miʿyār* of Aḥmad al-Wansharīsī (d. 1508), a scholar who collected and commented on opinions of hundreds of muftis who lived in the Islamic West between 1000 and 1500 C.E. Powers' book, *Law, Society, and Culture in the Maghrib, 1300–1500*, focuses on seven primary fatwas that deal with the topics of "paternity, fornication, water rights, family endowments, slander of the Prophet, and disinheritance of children."[10] He shows that extra-legal considerations that were not explicit or even apparent influenced the opinions of the muftis, so that the outcomes were the "product of *combined* legal and extra-legal factors."[11] Since the contextual details are difficult to discern from fatwas, even from primary ones, Powers adds that to "achieve a better understanding of the underlying nature

[7] Most Ottoman historians using court records, however, do so as a source for social history. Important exceptions are scholars such as Leslie Peirce and Boğaç Ergene, who are concerned with the practice of law and socio-legal history generally.

[8] Peirce, *Morality Tales*, 111.

[9] Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire*, 211. See also a series of articles (listed in the bibliography) published by Ronald Jennings in the 1970s based on the court records of seventeenth-century Ottoman Kayseri.

[10] Powers, *Law, Society, and Culture in the Maghrib, 1300–1500*, 229. A primary fatwa "is one that mentions the names of the litigants, the location of the dispute, and the date of specific events; it may also include a transcription of one or more legal documents relating to the case." When a mufti or jurist sought to create a compilation of legal opinions for the benefit of judges or jurists generally, he typically edited and abridged primary fatwas by removing "concrete historical details such as the names of people and places, . . . words and phrases that were not of direct legal relevance, and . . . documents attached to or embedded in a primary fatwā." He then further summarized and condensed the opinion to produce what has been called a "secondary fatwā," which presents "an abstract case that refers to one or more nameless individuals living in an unspecified place at an undetermined time." Ibid., 7 (citing Hallaq, "From *Fatwā*s to *Furūʿ*," 43–48). Typically, such primary fatwas, superseded in importance by their secondary versions, were not preserved, making it impossible for a modern scholar to recreate the social context of a secondary fatwa. One of the distinguishing characteristics of the *Miʿyār* is that al-Wansharīsī did include a small number of primary fatwas, and Powers drew from these for the seven fatwas upon which his book is based. Ibid., 8.

[11] Ibid., 232.

of a given dispute, the historian must examine additional, especially non-legal, sources that may shed greater light on the litigants' lives and their positions within society."[12] And yet, given source limitations, this is difficult to accomplish.

Judith Tucker used fatwas to examine how three muftis dealt with questions of particular concern to women in Ottoman Syria and Palestine. By focusing on three muftis, she was able to assess how each one approached his work differently, even as they were familiar with the same set of authoritative texts on topics that related to gender relations. She found that the muftis who wrote the fatwas and the courts that in turn applied them "did not eschew the Islamic legal doctrines they had inherited, which viewed male-female difference as a fundamental reality of social life,"[13] but they "seemed to opt, whenever possible, for the broader and more flexible interpretation of the law, for the interpretation that appeared to best serve the interests of justice as well as the needs and stability of their community."[14] This was all done under the heading of the applicable law, which offered, in addition to "certain incontrovertible principles and rules," the possibility of an outcome that promoted community harmony through a selection of textual sources and of variable interpretations.[15]

The present study contributes to this emerging field of Islamic socio-legal history, and is one of very few studies dealing with pre-Ottoman Islamic law in practice. Identifying the point of entry into the legal experience does pose challenges, but they can be overcome by reading the primary sources and assessing the various levels of information that they convey. The sources for any particular period and place can guide a historian to a site where a confluence of texts, contexts, and actors allows for a meaningful study of law in a particular social setting. This book also provides the first English-language monograph on the *muḥtasib* from any period in Islamic history, and the first extensive study of the Mamluk-era *muḥtasib*.[16] For a legal official whose relevance to the practice of law compares to that of the judge and mufti, this attention is long overdue. By using the *muḥtasib* as the central legal actor, this book also shows that socio-legal studies beyond those centered on the judge or mufti can and must be undertaken to continue to develop an understanding of the life of Islamic law.

[12] Ibid.
[13] Tucker, *In the House of the Law*, 181.
[14] Ibid., 181–182.
[15] Ibid., 182.
[16] Pedro Chalmeta's 1973 book, *El "señor del zoco" en España*, examines in great detail the *muḥtasib* in Muslim Spain, 898–1492 C.E., and provides a study of the markets in pre-Islamic and early Islamic history more generally. Nicola Ziadeh's *al-Ḥisba wa-l-muḥtasib fi al-islām*, published in 1962, is a general overview of the office in Islamic history without regard to a geographical location, while Sihām Abū Zayd's *al-Ḥisba fi Miṣr al-islāmiyya* covers Egypt from the Arab conquest through the Mamluk period. Article-length studies on the *muḥtasib* in the Mamluk period include Berkey, "The *Muḥtasib*s of Cairo under the Mamluks"; 'Abd ar-Rāziq, "La *ḥisba* et le *muḥtasib* en Égypte au temps des Mamlūks," and idem, "Les *muḥtasib*s de Fosṭāṭ au temps des Mamlūks," of which the latter two are lists of the individuals who held the position, along with biographical sources for each and some introductory commentary.

Sources and methodology

This book is built around actions taken by the *muḥtasib*. I begin with the details of the particular event, generally as reported in one or more chronicles, in order to understand the *muḥtasib*'s actions in their specific historical context. After examining the central event, I then bring in relevant other sources to piece together a full sense of the dynamics involved in the *muḥtasib*'s actions, including the reactions of those affected and the doctrinal and policy interests that were implicated. I am not comparing event and doctrinal rules, but rather assembling the whole range of relevant sources to allow connections among them to arise and resonate. Each case makes a point about the social practice of law or the sources of authority involved, and some do both.

The Mamluk-era *muḥtasib*s did not keep records of their actions (or if they did, there is no remnant of either the records themselves or references to them). I must rely on reports of their activities in chronicles, along with references to particular events in biographical dictionaries, topographies, and other writings, such as a treatise on weights and measures. Using chronicle reports as an archive requires caution in several regards. Historians were not writing a legal record and may not have been concerned about terminological precision, although from a legal perspective, particular details are very important. By virtue of their literary craft, however, historians were necessarily educated, and education at that time meant that they studied law among other topics. Thus, legal issues and their potential significance were certainly not beyond their comprehension. The educational backgrounds of the historians upon whose chronicles I rely in this book are fairly well known, and, indeed, they typically enjoyed legal training of some kind; some could be considered jurists in their own right, and some also even served as *muḥtasib*.

Presumably, chroniclers wrote down what they thought was interesting or important. That several chroniclers included different information about the same year in Cairo, or reported differing versions of the same events, shows that they made choices according to their own knowledge or their personal and often unstated criteria. Whereas a court record is expected to include most or all cases that came before the judge, we cannot know how any particular historian chose to record what he did about a *muḥtasib*'s actions or how those choices differed from one historian to the next, absent some explicit statement. In this study, I am therefore limited by what the chroniclers chose to include. Some took a particular interest in the activities of the *muḥtasib*, such as al-Maqrīzī, who himself served as *muḥtasib* three times in his career, while other chroniclers rarely mentioned the *muḥtasib*.

The use of chronicles as my main archive has some distinct advantages. Chronicles provide a fuller picture of context than do court records or fatwas. The chronicles identify social, political, and economic events along with what the *muḥtasib* did, making it very clear that a particular action followed a bread riot, or occurred in a time of rampant counterfeiting of coins, for example. I was thus able to line up all the relevant factors for each case in a way that is not possible for

research based on secondary fatwas, which present only the legal issue. Even when using primary fatwas, which include the names of the parties and the date and place of the events that formed the basis of the legal dispute, it is difficult to gain further details about the people involved if they did not merit discussion by authors of chronicles or biographical dictionaries.

For details about the backgrounds of the *muḥtasib*s, I relied heavily upon biographical dictionaries to provide context to their activities and decisions. Many of the *muḥtasib*s received one or more biographical dictionary entries, allowing for a discussion of how the individual's particular background, education, and interests may have influenced the actions he took. In her study based on court records, for example, Leslie Peirce regretted the lack of information regarding the judge of Aintab, Hüsameddin, who issued the decisions that formed the basis of her study.[17] She noted that biographical compilations "rarely included men who made their mark as provincial judges," such as Hüsameddin, but that "ideally, in a study of this sort one should know the identity of the provincial judge, the quality of his education, and the trajectory of his career."[18]

The geographies of Cairo and Fustat play an important role in the events discussed here as well, and the details of the location form part of my understanding and interpretation of each event. Did the *muḥtasib* treat a problem at the gates of the Citadel differently from an event on the edge of town, for example? Using historical maps, I identified the location of the *muḥtasib*'s stand (*dikka*) in Cairo, which functioned as a sort of "home base," and the location of the alley in Fustat where the *muḥtasib*'s stand likely was located. Most of the events in the book took place in Cairo, with only some in the second city of Fustat, and often I could identify precisely or roughly where they occurred and their locational relationship to the *muḥtasib*'s *dikka*.

Manuals written for the express purpose of guiding *muḥtasib*s in their work provided practical legal guidance, and formed a key source for this project. These manuals cover the *muḥtasib*'s qualifications and duties, caution against specific types of fraud and how to detect them, and suggest means of punishment. According to most views of the *muḥtasib*'s jurisdiction, the official was supposed to deal only in matters about which the jurists agreed; he should not impose his own view when there was juristic disagreement about the matter. Given this, the *muḥtasib* did not need to know the doctrinal complexities of every issue he encountered, and he did not need to have the same level of education as one who was known as a jurist. The manuals, then, were intended to present the basic rules of doctrine to the official in a simplified form, a kind of street-ready guidance. For each case, I determine how the three manuals relevant to the Mamluk period present the rules applicable to the factual scenario.

The rules presented in the manuals derive, in part, from the great corpus of *fiqh*, which is the product of the jurists' efforts at determining the legal rules according to which Muslims should live. Further, the content of the right and wrong that

[17] Peirce, *Morality Tales*, 93. [18] Ibid.

formed the basis of the *muḥtasib*'s jurisdiction came, in part, from the opinions of the jurists, and so *fiqh* rules are also important sources in this study. For each case, I determined the range of views on the particular topic, and while sometimes the matter was indeed agreed upon, often in fact the *muḥtasib* took the view of a particular school or even jurist, in which case I identified the particular view enforced. In the discussions of the relevant *fiqh* rules, I largely sought to determine what rules the manuals present, and then, in turn, the underlying or related rules in *fiqh* sources. The doctrinal discussions in each case are merely summaries of the dominant views; they are not intended as full surveys on the particular legal topic, for that is not a goal of this book. A comprehensive study of any of the doctrinal areas discussed—even one about which there was little disagreement—would necessitate its own lengthy article or monograph.

Additional sources I have used include a treatise on weights and measures and a treatise on church and synagogue destruction, both written by one of the early *muḥtasib*s of Fustat.[19] As part of the research for this project, I also walked through the geographical areas of the events in this book many times, getting a sense of the layout and distance from place to place: from the northern walls to the southern walls of Cairo; from the Citadel to the location of the Cairo *muḥtasib*'s *dikka*; from the Citadel to the center of Fustat. While Mamluk Cairo is now bisected by a major east–west road, the main streets and alleys stand on the same footprint as they did in the Mamluk period. Many of the buildings are still in existence and some have been newly "renovated" as part of a revitalization program.

The sources for this project impose some limitations on its scope. The book is organized topically, not chronologically, and, with a few exceptions, the material does not allow a study of how the treatment of a particular matter changed over time. For example, I cannot trace changes in the attitude of the *muḥtasib*s towards the length of towels that bathhouse attendants provided their customers (a matter of doctrinal and practical concern) because there is only one reported case on this topic from the Mamluk period. The substantive areas that do involve enough cases to see a development over time include prices and availability of food (and bread in particular, the essential food for the majority of the population) and, to a much lesser extent, tax collection and currency issuance and circulation. In terms of the officials themselves, a remarkable change relates to the qualifications of the individuals who were appointed to the office, as I discuss in Chapter 2.

Since this book is focused on events involving the *muḥtasib*, I do not delve into the writings that deal with "commanding right and forbidding wrong" more broadly, as it may be undertaken by any Muslim. There is a vast body of primary literature on this larger topic, which was covered in depth in Michael Cook's *Commanding Right and Forbidding Wrong in Islamic Thought*. I remain focused

[19] One source that yielded very little discussion of the *muḥtasib* was the Geniza collection of documents. S. D. Goitein noted that "the writers of the Geniza records are very reticent with regard to this office, all the more remarkable, since most of them deal with economic and legal matters and thus had good reason to make mention of the *muḥtasib*, if his presence made itself felt in the bazaars." Goitein, *A Mediterranean Society*, 2:369.

on materials that deal in particular with commanding right and forbidding wrong as practiced by the official appointed to carry it out, the *muḥtasib*, which is not covered in Cook's study. Likewise, my cases begin with events that involve the *muḥtasib*. The chronicles include many reports of legal events more generally, involving the sultan or the chief of police, to name just two, and these could form the basis of several other book-length projects, which would contribute greatly to our understanding of the social practice of law in Mamluk Egypt.[20]

The title of the book emphasizes its main themes and pursuits. The phrase "Islamic law in action," is, of course, in reference to the broad "law in action" approach to the study of law, which places emphasis on the observation of the legal practices of individuals and institutions.[21] Further, the position of *muḥtasib* itself embodies the "in action" concept. "Islamic law" is meant in the broad sense of Sharia, and is intended to encompass *fiqh* and to suggest that *siyāsa* might productively be considered *fiqh*'s necessary counterpart under the heading of Sharia. Reference to the issue of authority indicates the book's concerns with the role of individuals in mediating and determining what is understood as God's requirements; Islamic law does not exist on its own as a set of rules set forth by God. Even after doctrine has been articulated by jurists, that law is not itself an actor: humans, such as the judge, *muḥtasib*, mufti, sultan, and Muslims generally give it meaning at the social level. The notion of everyday experiences highlights the book's core interest with the ongoing interactions, which took place in specific social contexts, between the legal official and the people whom he regulated and disciplined. The historical evidence involving the *muḥtasib* shows in several ways how the individuals whom he was attempting to regulate took part in the overall event, shaping the factual scenario that demanded his attention and reacting to and engaging with him in ways that did not necessarily involve merely submitting to his orders.

Outline of the book

The first two chapters of the book provide essential background, with Chapters 3 to 9 revolving around the actions of the *muḥtasib* in specific topic areas. Chapter 1 gives an overview of the place and time of the book's events—Cairo and neighboring Fustat in the Mamluk period—and describes the inhabitants, ranging from the ruling Mamluks and their system of military hierarchy to the common people struggling to survive. The chapter briefly discusses the economic situation and the structure of the grain markets in particular, since the *muḥtasib*s were frequently engaged in efforts to ensure urbanites their daily bread. The chapter then moves to the two main sources of

[20] Carl Petry is working on a monograph that deals with crime and punishment generally in the Mamluk period, which will be a significant contribution to our understanding of crimes and their punishments as they involved any official of the sultanate.

[21] This phrase has been most closely associated with Stuart Macaulay. See Macaulay, Friedman, and Mertz, *Law in Action: A Socio-Legal Reader*.

legal authority, represented by the jurists and the sultans, and, finally, discusses the specific sites and institutions where law was applied.

Chapter 2 focuses on the position of the *muḥtasib* in theory and practice. Because the concept of *ḥisba* underlying the official's jurisdiction is believed to come from the Quran, this chapter begins with the Quranic origins of the charge to "command right and forbid wrong." Historically, jurists tried to articulate the *muḥtasib*'s duties and responsibilities, and the clearest and most influential explanation was given by the Shāfiʿī jurist al-Māwardī (d. 1058) in his book of public law, *al-Aḥkām al-sulṭāniyya*. His framing of the office and its jurisdiction and duties helps us to understand the Mamluk *muḥtasib*. Chapter 2 then outlines the details of the position of *muḥtasib* in Mamluk Cairo and Fustat. It identifies the geographical jurisdictions and analyzes the job description in the appointment document used by the sultan. The chapter then turns to the manuals, which contain street-ready legal rules for the *muḥtasib* to use. Finally, Chapter 2 provides a sense of the type of individuals who held the position, based on biographical information.

The historical case studies, organized by topics that represent the full range of the *muḥtasib*'s activities as reported by the chronicles, begin in Chapter 3. The term "case" is used in the general sense of "event." The ordering of Chapters 3 through 9 contributes to the larger argument of the book regarding sources of authority. I begin in Chapter 3 with topics of Muslim devotional practice, areas the jurists discussed extensively in their doctrine, and I end in Chapter 9 with orderly public behavior, a matter of great concern to the sultan but for which the jurists articulated few specific rules. This creates an overarching framework in which each chapter moves further along this spectrum, ranging from areas of intense doctrinal concerns to those dominated by matters of policy. As the cases show, however, no topic was beyond the reach of the *muḥtasib* or, in turn, either of the official's sources of authority of *fiqh* and *siyāsa*—the sultan involved himself in areas of doctrinal rules in his own way, and the jurists became involved in larger society-wide matters from their own perspectives.

Chapter 3 covers public displays of some of the most central components of Muslim devotional practice, such as fasting and prayer. The details of these topics may not seem of concern to a ruler, and, further, the rules in these fields were elaborated in great detail by the jurists. But a ritual matter could also serve a perceived need of the sultan, and the ruler did pay attention in this area and marshaled the *muḥtasib* to achieve his goals. The *muḥtasib* acting on his own tried to enforce agreed-upon doctrinal rules of devotion in creative ways and he also stepped into areas on the margins of doctrine, just beyond the scope of what the jurists concerned themselves with but not far enough away to escape entirely from their criticism. This chapter includes cases involving merchants praying in front of their shops; the call to prayer; the content of a popular preacher's sermons; and fasting and communal prayers of supplication in a time of plague.

Chapter 4 deals with topics loosely gathered under the heading of serious crimes and minor offenses, including gambling, consumption of intoxicants, prostitution, and accusations of other impermissible sexual conduct. Legal doctrine dealt explicitly with all of the topics discussed here. Discretionary punishment (*taʿzīr*), which figures prominently in the *muḥtasib*'s actions, functioned with the other main bases

of punishment, the fixed penalties of *ḥadd* crimes and the lesser-known policy-based punishment (punishment by *siyāsa*, or *siyāsatan*), to show the full range of headings under which an official might punish a wrongdoer. These cases show the *muḥtasib*'s broad discretion when dealing with offenders, and specifically his preference for applying *taʿzīr* to wrongful acts and his desire to avoid escalating the matter into a prosecution of a *ḥadd* crime (for which he would have to turn the offender over to a judge). Some *muḥtasib*s were not concerned with minor displays of bad behavior, engaged in quietly and discreetly, while others seemed to have enjoyed raids on vice, taking along some of the sultan's military men for good measure. For the sultan, public behavior that flouted doctrine could be a threat to public order because it showed that the sultan could not control what happened in society. It could also provoke God to punish by sending the plague, as seen in a case in this chapter, and the sultan's goal was to do whatever was necessary to stop it.

Chapter 5 turns to the regulation of Christians and Jews, who came under the governance of both their own religious authorities and the ruling Muslims. Matters of religious doctrine were determined by church and synagogue leaders, but the *muḥtasib* had the power to regulate public behavior. Jurists elaborated rules for non-Muslims in their discussions on *ahl al-dhimma*, meaning those who were under the protection of the Muslims. In exchange for that protection, non-Muslims had to comply with certain conditions, considered to have been articulated for the first time in the Pact of ʿUmar (the second successor to the Prophet, d. 644), and also pay a tax (*jizya*). The cases in this chapter invoke the Pact of ʿUmar, and in doing so show that it was not a fixed and finite list of rules but rather some of the details changed with time. Further, non-Muslims seem to have worked out a general understanding with the *muḥtasib* and the ruling Muslims generally about what was expected of them, and when the *muḥtasib* decided to heighten enforcement of particular matters, as seen in the chapter, they made their dissatisfaction known and even resisted. This chapter treats the destruction of a church on grounds that the church clappers were too loud; regulation of the dress of Christians and Jews in public; complaints that Christians dominated bureaucratic positions in the state; and the collection of the *jizya*.

Chapters 6 and 7 deal with commercial transactions, beginning in Chapter 6 with market regulation and consumer protection generally and moving to Chapter 7 for the specific markets of grain, wheat, and bread. The commercial matters treated in Chapter 6 include a new market on the edge of town; the sale of dog meat and carrion; towels provided to customers in the bathhouse; scales, weights, and measures used in the market; a merchant of salted birds who left his wares rotting in storage; and consumer protection generally. These topics are found under several headings in the *fiqh* books, including sales and slaughter, and were all matters of juristic concern. But in the busy marketplace, where every scale and measuring cup formed a possible means for a merchant to cheat customers (knowingly or not), priorities had to be determined by the *muḥtasib*, and this task was beyond the scope of doctrine. Should he test the scales of the merchants, for example, or dispatch his own appointees to the markets with weighing apparatus and require merchants and customers to use them instead? Should he punish butchers for selling dog meat in a time of famine,

customers for buying it, or both? In these kinds of decisions, he had to rely on his own judgment, which might be influenced by his own personal career goals or interests. Further, the sultan certainly could step in and direct the *muḥtasib* to act.

Chapter 7 focuses on the pricing and availability of grain, wheat, and bread, which were the most fundamental elements of the food supply. A common theme runs through these cases: people wanted access to cheap and abundant bread, the merchants (who included the sultan's officers, the amirs) wanted to maximize profit, and the *muḥtasib* negotiated the very difficult space between these competing sets of demands. Doctrine tended to protect the property of the merchants from price-setting and forced sales, except in the most serious of cases of need. The people, however, demanded that the *muḥtasib* make bread available in the market, and the sultan, wanting to avoid social unrest, often added to this pressure, even against the interests of his own amirs. This chapter shows that while the laws on hoarding and price-setting appear to have been widely understood and respected in their general contours, sometimes they had to yield to the needs of the day.

Chapter 8 deals with money: the coins that people used and the money that the sultan collected in the form of taxes. The material of this chapter thus moves closer toward the ruler end of the spectrum of topics of interest, with the sultan and his *siyāsa* apparatus even more clearly present in these case studies. The jurists formulated doctrine on matters of the charitable *zakāt* tax and gold and silver coinage, but had far less to say about the copper coins that were in widespread use, and the jurists' treatment of non-doctrinal taxes was mainly limited to criticizing them. *Muḥtasib*s were called into action to prevent the use of counterfeit coins and to supervise the sultan's attempts to issue new coinage. Likewise, the *muḥtasib* assisted with tax collection, sometimes collecting taxes that the jurists considered illegal. Actions in the areas of taxes and currency called for wide-ranging measures on the sultan's part, including the show of force to achieve compliance.

With Chapter 9, the topics of the case studies reach the other end of the arc—having begun with areas that the jurists dealt with extensively in their doctrine, with this chapter the book reaches public order generally, about which the jurists had little to say, deferring, explicitly or implicitly, to the ruler. The sultan certainly cared about social stability and public order, whether disrupted by one particular trouble-maker or by an entire class of rebellious merchants. As agents of the sultan, appointed by him and serving at his pleasure, the *muḥtasib*s played an important role in carrying out commands in the service of general social order.

The concluding chapter synthesizes new understandings of the position of *muḥtasib* in the Mamluk era as a result of this book's research, with a focus on the kinds of individuals who held it, the sources of their authority, the full expanse of their activities, and the ways that they interacted with the people they regulated. Moving to a broader methodological context, it identifies aspects of this study that can be carried into future research in pursuit of understandings of Islamic law in action. The chapter ends with a discussion of how the book's main concerns can be used to examine and better understand claims of legal authority and the practice of Islamic law today in general.

1

The Mamluk sultanate and Islamic legal history

When the Mamluks took control of Egypt from their former masters the Ayyubids (r. 1169–1252), they inherited a population, economy, and legal system that they had no reason to attempt to change in any dramatic way. The Mamluks did develop their own particularities of governance, though, that affected not only the ruling elite but also society at large, forming the social setting within which the events discussed in this book unfolded. Thus, background information on the Mamluk sultanate and its legal system in this chapter, and then an introduction to the position of the *muḥtasib* in Chapter 2, are the necessary preparatory steps before getting to the cases involving the *muḥtasib* that form the core of the book.

The Mamluk sultanate

Cairo and Fustat, circa 1250–1517

The events discussed in this book occurred in Cairo and its adjacent older city of Fustat during the period from roughly 1250 to 1517.[1] Cairo served as the administrative and commercial center of the Mamluk sultanate, which ruled a vast territory encompassing both Egypt and Greater Syria.[2] The sultanate bears the name of its

[1] The Mamluk period has received extensive scholarly attention, including its own journal, *Mamlūk Studies Review*, and an online bibliography of primary sources and secondary works that is maintained by the Middle East Documentation Center at the University of Chicago. Only a few key sources are noted here. The most prominent English-language surveys of the Egyptian Mamluk period are Holt, *The Age of the Crusades*, and Irwin, *The Middle East in the Middle Ages*, both of which emphasize political developments. Studies of particular years within the Mamluk period include: Northrup, *From Slave to Sultan* (the reign of al-Manṣūr Qalāwūn, 1279–90); Levanoni, *A Turning Point in Mamluk History* (the third reign of al-Nāṣir Muḥammad b. Qalāwūn, 1310–41); and Petry, *Protectors or Praetorians?* and *Twilight of Majesty* (both focusing on 1468–1517). Petry (ed.), *The Cambridge History of Egypt*, Vol. 1, covers the years 640–1517, with several chapters dedicated to the political history of Mamluk Egypt as well as monetary history, art and architecture, culture and society, historiography, and non-Muslims. Arabic-language surveys include those by the Egyptian scholar Qāsim ʿAbduh Qāsim, most notable of which are his *ʿAṣr salāṭīn al-mamālīk* and the related *ʿAṣr salāṭīn al-mamālīk: Al-Tārīkh al-siyāsī wa-l-ijtimāʿī*. Lapidus, *Muslim Cities in the Later Middle Ages*, is a social history (with more attention to Mamluk Syria than Egypt). Scholarly attention has now turned more fully to the social history of the Mamluk period, and such studies are cited where relevant below.

[2] Mamluk sultans claimed formal control over the Hijaz, including Mecca and Medina, and also made claims on territories such as the Yemen and Armenia. Irwin, *The Middle East in the Middle Ages*, 120.

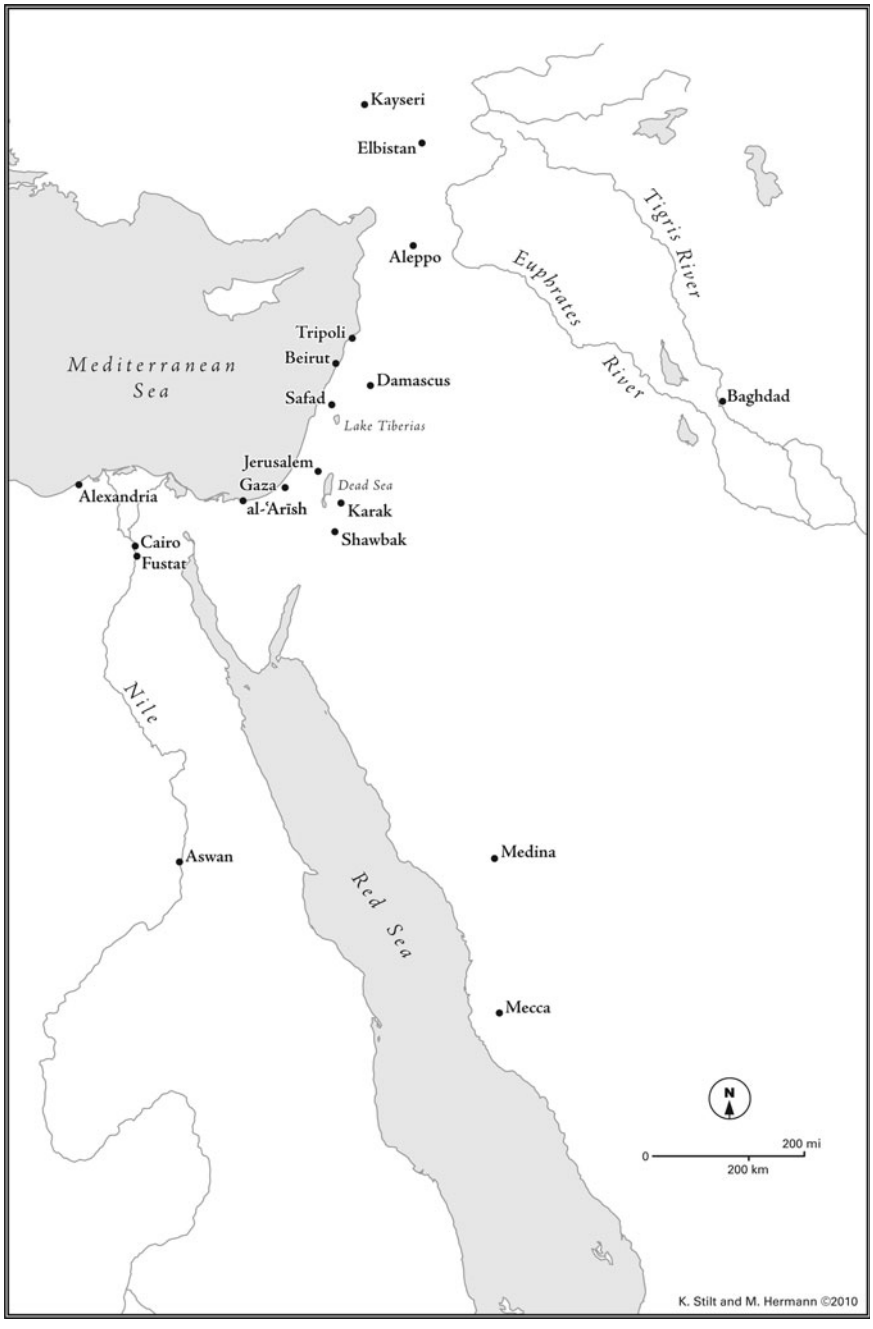
rulers, not as a family or dynastic name, but rather with reference to both the former status of the founders of the empire as "owned" (*mamlūk*) slave soldiers of the Ayyubid rulers of Egypt and the system of importation of slave soldiers that they further developed.[3] Unlike the Ayyubid use of slave soldiers, not only was the leadership of the new regime composed of former slaves but the system of continual imports replicated that same dynamic of slaves turned rulers, so that new soldiers could rise through the ranks with the chance of eventually reaching the top position of sultan. With Cairo as its capital city, Mamluk Egypt became the major power in the region after the Mongol invasions that swept westward and destroyed Baghdad in 1258 (see Map 1.1).

At the time of the Muslim expansion into Egypt in 640, Egypt was under Byzantine control. The Byzantines unsuccessfully defended against the invaders from their strongholds in Babylon and the connected island of Rawḍa (see Map 1.2). After the Muslim victory, the Muslim leader ʿUmar, who was the second successor to the Prophet, instructed his military commander ʿAmr b. al-ʿĀṣ to establish a base that would allow him to protect the land route to Arabia. ʿAmr stationed his troops on the eastern bank of the Nile just northeast of the Byzantine Babylonian fortress (which the Arabs renamed Qaṣr al-Shamʿ) and built the first mosque in Africa on this site. Commercial markets quickly developed around it, and the area became a city that kept the informal name for an army encampment, Fustat.[4]

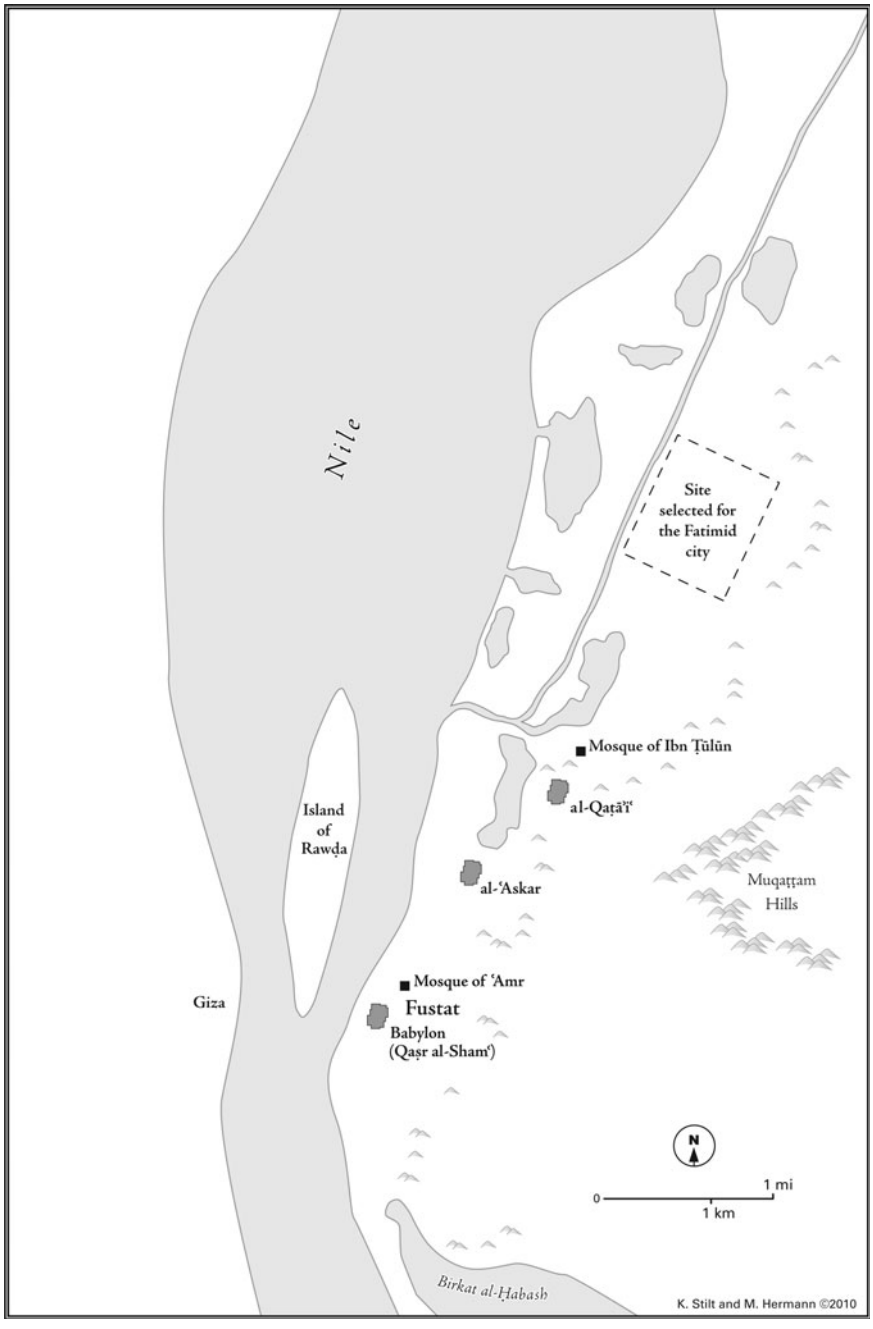
With the dynastic change in the caliphate in 750, the new Abbasid power sought to establish its own center in Egypt and chose a site immediately north of Fustat.[5] Called al-ʿAskar, it was built to house administrative buildings and a mosque; over the following century it eventually blended in with Fustat (see Map 1.2). From their capital in Baghdad, the Abbasid caliphs sent governors to Egypt, and some of them exercised increasing autonomy from central control. One governor, Aḥmad b. Ṭūlūn (d. 884), took the opportunity provided by Abbasid instability to make his own mark of independence by establishing the city of al-Qaṭāʾiʿ, which he built to the northeast of Fustat and al-ʿAskar. The main construction was his large mosque, named after himself, which was the only building spared when the Abbasids reasserted control in 905 and destroyed al-Qaṭāʾiʿ, in part to deter any future displays of independence by their governors. Despite these two efforts to establish new cities, Fustat remained Egypt's administrative capital.[6]

As the Abbasids were re-establishing their control over Fustat, the Shiʿi Fatimids were building strength further to the west in Tunisia. They made attempts to conquer Egypt in 914 and 921, and were finally successful in 969. Led by General Jawhar, the Fatimids defeated local forces on the west bank of the Nile at Jīza (Giza) and then crossed over into Fustat. Soon thereafter, Jawhar began work on a new

[3] Northrup, *From Slave to Sultan*, 244.
[4] Abu-Lughod, *Cairo*, 5–13.
[5] The last Umayyad caliph, Marwān II, fled to Fustat in an effort to escape the Abbasids, prompting not only a struggle in which part of Fustat was burned but also the apprehension and beheading of Marwān. Ibid., 14.
[6] Ibid., 14.



Map 1.1. Egypt and surrounding areas in the Mamluk period.



Map 1.2. Fustat and surrounding areas at the time of the arrival of the Fatimid caliph in 973.

capital city, which was inaugurated with the arrival of the Fatimid caliph al-Muʿizz in 973. Given the geographical limits set by the Nile and the mountain ridges running along its east side from southwest to northeast, the only empty space that could accommodate this project was further north of the mosque of Ibn Ṭūlūn. Named al-Qāhira, "the Victorious," the new city provided the Fatimids their own protected enclosure, a "royal refuge within whose secure enclosure an alien Caliph and his entourage could pursue their lives"; the common people of Fustat, which remained the commercial capital, could enter only by permit.[7]

Fatimid control of Egypt weakened as a result of the Second Crusade (1147–8), with the result that a Sunni official in the Fatimids' service, Ṣalāḥ al-Dīn b. Ayyūb (known in English as Saladin), was able to re-establish Egypt's loyalties to the Abbasid caliphate by 1171. Thus began the empire known as the Ayyubids, the family name of Ṣalāḥ al-Dīn, who thereafter expanded his empire beyond Egypt to include the north African coast, western Arabia, and Greater Syria.[8] He rebuilt the deteriorating Fatimid walls around Cairo and developed plans to build a citadel and to extend the walls to enclose both Cairo and Fustat. The Citadel, as the center of the defense system, was finished under his successors, but the full scope of his wall project was never fully realized. Unlike the Fatimids, Ṣalāḥ al-Dīn did not maintain Cairo as an elite space but opened it to settlement by common people, turning the city into a working and living space suitable for the general population. The northern walls, needed to protect the city from invaders from that direction, were extended westward all the way to al-Maks on the Nile, opening the area on the western side of the canal for construction (see Map 1.3).[9]

The Ayyubids imported mercenaries and slave soldiers (*mamlūk*, pl. *mamālīk*); the latter were relied upon heavily toward the end of the Ayyubid period and helped to secure a defeat of the Crusade of St. Louis in 1249–50. When the Mongols threatened the Ayyubids, these *mamlūk*s again defended against an attempted invasion of Cairo, and then took advantage of internal political instability to wrest control of the empire from their masters. The Mamluk sultanate generally began in 1250 with the Baḥrī line of *mamlūk*s in command; in 1382, the Burjī, or Circassian, line took control and reigned until the Ottoman conquest in 1517. The ability of the Mamluk rulers to protect the empire from the Mongols facilitated their acceptance by the general population as well as by members of the former regime.[10]

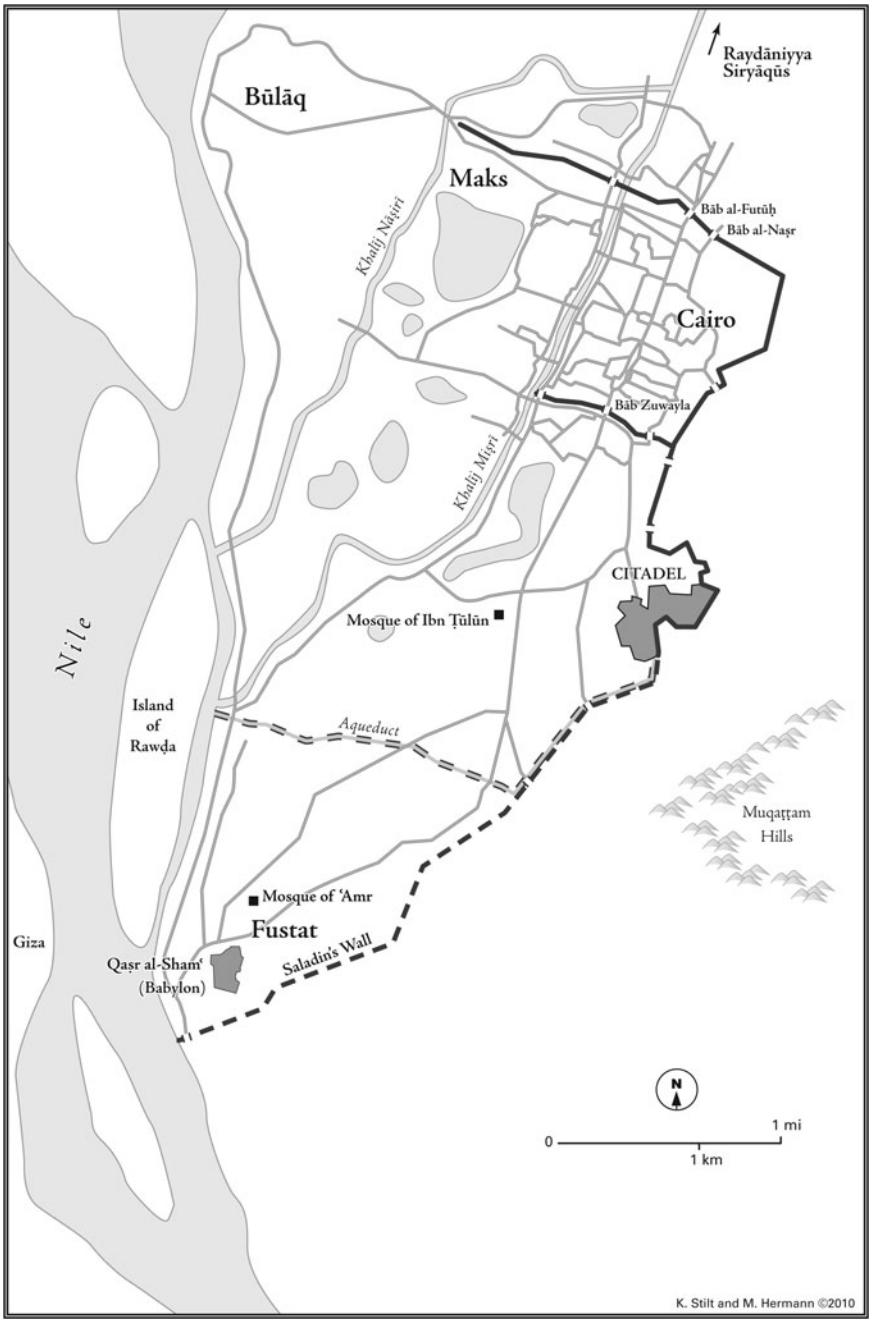
The Mamluks maintained Cairo as their capital, with the Citadel as their main personal domicile, and continued the Ayyubid practice of allowing the Egyptian populace to establish housing and businesses inside the city. Cairo grew to become

[7] Ibid., 18–19.

[8] For an introduction to Ṣalāḥ al-Dīn and the Ayyubids, see generally Chamberlain, "The Crusader Era and the Ayyūbid Dynasty," and sources cited in ibid. at 211 n. 1.

[9] Abu-Lughod, *Cairo*, 20–30; Chamberlain, "The Crusader Era and the Ayyūbid Dynasty," 214–218.

[10] Northrup, "The Baḥrī Mamlūk Sultanate, 1250–1390," 248–250. I use the term "*mamlūk*" when referring specifically to a slave soldier, and the more general and Anglicized term "Mamluk" to describe the overall dynastic, governmental, and military system of the slave soldiers-turned-rulers.



Map 1.3. Cairo and Fustat in approximately 1350.

not only the center of Egypt's political, social, and economic activity, but also the capital of a vast empire, rivaling the other great cities of the world.[11] Expansion outside the walls of Cairo was particularly active in the early years of the Mamluk period, and urban growth filled in to some extent the area between Fustat and Cairo, which were separated by a distance of about two miles, with the mosque of Ibn Ṭūlūn located in the middle. As the smaller neighbor to the south, Fustat remained an important residential and commercial center.

A diverse population

The Mamluk rulers assumed control of a population with internal divisions and groupings. On top of this they developed their own extensive system of a ruling and military hierarchy. The type of people encountered in the events of this book can be divided into five groups: the large category that might best be called the general population; the jurists and learned scholars more generally; administrators in the sultanate's service; merchants; and the Mamluk ruling elite and their soldiers, of all ranks.[12] For many people, one category adequately describes them, but some straddled two, such as the soldier who also served as an administrator. Entrance into the Mamluk military depended on enslavement and importation as a boy, whereas children of such imported soldiers typically did not enter the military themselves; instead, they might become scholars, merchants, or ordinary civilians. The scholarly group was distinguished mainly by education in and knowledge of the Islamic sciences. Becoming a scholar was not out of reach for a promising student from a poor or uneducated family. Other kinds of descriptors cross categories, such as Sufi mystics, who were present across broad sectors of society, including merchants and scholars.[13]

The chroniclers often refer in general terms to the "people" (*ʿāmma*) when reporting a particular event, indicating individuals who were not otherwise describable in a more precise way. They were mostly Muslim, but there were also sizable minorities of Christians and Jews.[14] The "people" might protest bread prices, shouting at the *muḥtasib* and pelting him with stones, such that he hid at home, as in one case discussed in this book; as in the case of the female caravan watchers, an event might involve "a group of women." If an individual from this large category is identified by a chronicler, it is usually by description rather than by name, such as "a woman whose son recently died from the plague."

[11] Abu-Lughod, *Cairo*, 41. Even in the fifteenth century, when Cairo's population had declined from the previous century, "Cairo was still greater in extent and population than *any* city in Europe." Ibid.

[12] There are many different ways of dividing these groups. Carl Petry focused on the group he called the "civilian elite" and broke it down by profession, including the legal professions. Petry, *The Civilian Elite of Cairo in the Later Middle Ages*. Nasser Rabbat put merchants in with the "common people." Rabbat, "Representing the Mamluks in Mamluk Historical Writing," 60. One particular resident of Cairo, the caliph, is discussed separately below.

[13] Petry, *The Civilian Elite of Cairo in the Later Middle Ages*, 269–272.

[14] As discussed in Chapter 5.

Some basic characteristics of the daily lives of the general population that have emerged from social histories of the period are hard work and difficulties. Residents of Cairo and Fustat earned a subsistence income as water carriers, bakers, and bathhouse attendants, for example. Bread was the staple food, purchased daily, and rising prices could gravely affect their ability to acquire it. They received charity and may have had to beg for it; their clothing, diet, and housing were often inadequate.[15] They married and then divorced in "remarkably high" numbers.[16] Some women worked outside the home, as hairdressers, midwives, washers of the dead, attendants in female baths, and peddlers of goods, for example. Other women worked for wages in the home, spinning yarn, sewing, and embroidering textiles and clothes.[17]

Hanging over the rigors of daily life was the specter of death.[18] As is to be expected, plagues and epidemics affected the poor and undernourished more profoundly than they did those with economic resources.[19] One of the most significant events of the period was the Black Death, a pandemic of plague that struck Egypt and Syria in 1347 with recurring outbreaks to 1517.[20] The peak of the Black Death in Cairo occurred in the winter of 1348 and subsided in February 1349. The outbreaks had a devastating effect on the population and they form the background scene to several events discussed in this book. Estimates of population decline from the plague are difficult to make; the Mamluk-era historian al-Maqrīzī estimated that 13,800 funerals took place in a two-day period when the deaths were at their highest in the winter of 1348.[21] Another estimate claims that mortality in Cairo may have reached 200,000, of a city that, at its largest, housed 500,000 inhabitants.[22]

The scholars were distinguished by advanced education and some general social recognition of their learned status, with the sub-group of jurists recognized in particular for a high degree of learning in Islamic law. They were almost always male.[23] Chronicle reports typically identify a person as learned by listing some of the following: his teachers; where he taught and what subjects; the books he wrote; positions held, such as judge (and possibly *muḥtasib*); whether he gave fatwas; and general opinions of him as stated by other scholars. Advanced education in the Mamluk period typically took place in a college (*madrasa*), where scholars taught courses in Quran, *ḥadīth* (transmitted reports of the Prophet's normative practice), grammar, exegesis, and *fiqh*. By the time a student reached the *madrasa*, he had already acquired basic skills in Arabic and Quranic studies from a primary school or

[15] Sabra, *Poverty and Charity in Medieval Islam*, 32–68, 169.
[16] Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, 5.
[17] Ibid., 32.
[18] Shoshan, *Popular Culture in Medieval Cairo*, 4.
[19] Sabra, *Poverty and Charity in Medieval Islam*, 121.
[20] See generally Dols, *The Black Death in the Middle East*.
[21] Ibid., 213–215.
[22] Abu-Lughod, *Cairo*, 37.
[23] Women certainly did acquire advanced education (including in *fiqh*) outside of the formal educational venues, but few if any in the Mamluk period had social recognition as jurists. See Berkey, "Women and Islamic Education in the Mamluk Period"; idem, *The Transmission of Knowledge in Medieval Cairo*, 161–181.

from private studies. Study circles in mosques were also sites of higher education. The *madrasa*s of the Mamluk period were funded mainly by pious endowments (sing. *waqf*), which paid for professorial positions, stipends to students, and even housing for students and faculty.[24]

Administrators served the sultanate by working in secretarial and financial positions, which included the significant office of financial comptroller (*nāẓir*).[25] The typical administrator was neither a scholar nor a military man, although both of these types did serve in administrative positions.[26] Individuals who best fit the category of administrators sometimes served as *muḥtasib*, often quite successfully. For example, one biographer praised Ḍiyāʾ al-Dīn, a *muḥtasib* of Cairo, for being a good comptroller of the Manṣūrī hospital and for increasing the yields of its revenue-generating properties.[27] The typical administrator had some education, although less than that of a typical scholar. Christians could and did serve as administrators in numbers large enough to attract criticism by some Muslims (a case in Chapter 5 focuses on this issue).

The diverse group of people that can be bracketed under the heading of merchants included large wholesalers and owners of small shops. While many merchants were civilians, some high-ranking soldiers were wholesalers of grain because they received it as their compensation for service. Although many merchants probably had little formal education, some did and even participated in literary activities, usually after achieving enough success in business endeavors to turn their attention to pursuing an education.[28] Merchants sold raw materials such as yarn, cotton, and leather, and made goods such as clothing and shoes. Food preparers (and especially bakers) were extremely important because most urbanites lacked an oven or other source of heat at home, and so they either bought a ready-made meal from a cook's stand in the market or prepared a dish at home and took it to the market for cooking.[29]

The military was a much more coherent group than the previous ones; indeed, uniformity of experience was an essential part of making military men out of imported slaves. The master—either the sultan or an officer (*amīr*, or amir)—imported and then trained young men from Central Asia and the Caucasus. The training covered the Arabic language, the basics of Islam, and military arts, particularly skills related to fighting with lance and bow atop a horse. After training, the soldier was typically emancipated (and thus no longer technically a slave although still referred to as *mamlūk*), while supposedly remaining loyal to the master who raised him.[30]

[24] Berkey, *The Transmission of Knowledge in Medieval Cairo*, 6–9.
[25] Petry, *The Civilian Elite of Cairo in the Later Middle Ages*, 202–220.
[26] See ibid., 202–203, for a discussion of the distinction between the scholarly and the administrative or bureaucratic positions.
[27] Al-Ṣafadī, *Aʿyān al-ʿaṣr*, 5:617.
[28] Petry, *The Civilian Elite of Cairo in the Later Middle Ages*, 242.
[29] Lewicka, "Restaurants, Inns and Taverns That Never Were," 43.
[30] Northrup, "The Baḥrī Mamlūk Sultanate, 1250–1390," 244–251. The structure of the Mamluk army has been studied extensively by David Ayalon. Many of his key articles have been collected in Ayalon, *Studies on the Mamlūks of Egypt (1250–1517)* and in Ayalon, *The Mamlūk Military Society*. His views on the careers of the children of Mamluks, however, have been revised by Ulrich Haarmann and

The sultan, who was the first among equals, gained his position after being recognized as such by his peers.[31] The sultan's immediate aides were his own soldiers, while his amirs had authority over their own units of soldiers. As an amir worked his way up the ladder, he accumulated an increasingly larger troop of soldiers until he and his men formed a kind of miniature sultanate within the larger hierarchy. Since each amir was essentially the leader of a small private army, when he challenged a rival, his soldiers could carry the struggle into the streets, disrupting daily life for the common people.[32]

Sons of the Mamluk soldiers had some freedom of choice in determining their career path. Since the military elite was staffed almost entirely by new slave imports, the next generation did not have an automatic place in the military, although these sons of Mamluks (*awlād al-nās*) could seek a career in it and even rise quite high, depending on the policy of the current sultan.[33] These children were also familiar with the civilian world in which they grew up, having attended local Arabic-language primary schools. They could seek higher education or occupy administrative positions in the sultanate. Likewise, they might develop a mercantile pursuit or simply fade into the general population.[34] Seeking integration with the civilian side of life, however, may not have been easy. As Ulrich Haarmann has speculated, Egyptians did not grant them "a roaring welcome. They may rather have tasted the anti-Mamluk bias rampant among the local civilian elites."[35] Yet some children of Mamluks were able to overcome this bias, and they gained an education, entered the civilian elite, and even became important historians and chroniclers of the period.

An agricultural economy

Agricultural products were the source of almost all of the wealth in the empire.[36] Specifically, "grain was Egypt's single most important product, vital to the livelihood of the population, and vital at the same time to the tax revenues and to the supply of the state elites," as Ira Lapidus explained.[37] The Nile river and its inundations of the fields created this agricultural wealth. As a result, the annual flooding of the Nile was an important event and when the river did not rise to its expected level, great concern developed that the year's crops would be less than needed to feed the population.

others, discussed below. For military training, see the Ayalon sources above; for education in other areas, see Berkey, "The Mamluks as Muslims," 164; Little, "Religion under the Mamluks," 166.

[31] While this meant that the position of sultan was earned and not inherited, some did name their sons as successors, such as Sultan Qalāwūn, who established a dynasty. Northrup, "The Baḥrī Mamlūk Sultanate, 1250–1390," 257.

[32] See generally ibid., 254–265.

[33] See Haarmann, "Joseph's Law," 62–70; Richards, "Mamluk Amirs and Their Families and Households," 40–54 (providing an extensive list of amirs who were *awlād al-nās*).

[34] See Haarmann, "Joseph's Law," 77–83.

[35] Ibid., 82.

[36] Northrup, *From Slave to Sultan*, 254.

[37] Lapidus, "The Grain Economy of Mamluk Egypt," 2.

All crops were subject to state taxation, in kind or in cash, and the sultan's royal treasury took its share first. Amirs and some other officials of the sultanate received crops as direct payment in kind through a system where the produce of specific plots was directed to officials as designated by the sultan (*iqṭāʿ*). With these crops and their proceeds, an amir was expected to support both himself and the soldiers in his service. As a result of this system, the sultan and the amirs controlled large amounts of grain and other agricultural products, and they could influence the market in attempts to increase their own revenues. Because grain produced in the rural areas sustained the cities of Cairo and Fustat, the peasants who worked on the land form an important background element to city life, even though they rarely appear in the events studied in this book. Peasants, who received what was left when everyone else had taken a share, sometimes were able to accumulate a small surplus for sale or barter. Other than those small amounts they retained, the total supply of grain in the market was controlled mainly by the sultan, the amirs, and the large private brokers.[38]

In the fifteenth century, the sultanate began to derive substantial revenue from the longstanding international trade that supplied Europe with luxury goods, spices chief among them, by taxing the merchants who passed through Mamluk-controlled ports.[39] Sultan al-Ashraf Barsbāy in particular imposed a state monopoly on the markets for these goods, which involved setting sale and purchase prices, from which the sultanate took a percentage as a kind of tax.[40] Merchants who dealt in this trade "managed to survive the intermittent monopoly system for approximately fifty years before they disappeared from the scene."[41]

Islamic legal history

Sources of authority

In these urban centers of Cairo and Fustat, what rules governed how the inhabitants lived and conducted their daily affairs? More specifically, what sources of law formed the basis of the actions and choices of the *muḥtasib*? Both the jurists and the sultan guided the *muḥtasib* in carrying out his charge. The existence of multiple sources of legal authority was not a Mamluk invention but dates to early Islamic history. According to the standard Sunni account, immediately after the Prophet's death in 632, his companions decided that one individual should lead the Muslim community; the first such individual was Abū Bakr, an early convert and the Prophet's father-in-law.[42] From the earliest period, these leaders of the community pronounced their own authoritative views that they expected would be

[38] Rabie, *The Financial System of Egypt*, 32–41; Lapidus, "The Grain Economy of Mamluk Egypt," 3–5.
[39] Petry, *The Civilian Elite of Cairo in the Later Middle Ages*, 29–30. The spice merchants in particular, known as *tujjār al-kārim*, or *kārimī*, "stand as one of the brilliant commercial classes of Near Eastern history." Ibid., 30.
[40] Ibid.
[41] Ibid., 31.
[42] Kennedy, *The Prophet and the Age of the Caliphates*, 51–53.

followed, such as 'Umar's ordinances on matters of administration, crime, ritual, and family law.[43] Alongside this, learned men, sometimes in the capacity of judges, articulated rules of law based on the Quran and, initially, a shifting array of other sources, which included the Prophet's practice, the practice of the Prophet's companions and of the first four successors to the Prophet in particular, local norms, and their own discretionary opinions.[44]

The title of the Prophet's successors went through several formulations, and eventually became *khalīfa*, or caliph in its Anglicized form.[45] The institution of the caliphate changed dramatically in the following centuries, and the caliph's power as a symbol exceeded real control well before 1258 when the Mongols conquered Baghdad and killed the then-reigning caliph. While there is no one event that marked the caliph's diminishing control over the geographical expanse of the caliphate, it was during the tenth century that "the caliphate disintegrated into a bewildering variety of successor states" in which local rulers took actual control of governance in their areas.[46] The provincial ruler, in turn, recognized the caliph as the head of the unified Islamic world, cementing a relationship that advanced the needs of both.[47] Symbolically, these rulers acknowledged the caliph in the sermon given at Friday prayers (*khuṭba*).[48]

Since these provincial rulers arose typically through military might, modern scholars have labeled them as secular or political.[49] Initially this may seem a helpful way to translate their purview into English terms understandable today. The ruler—or in our case, the Mamluk sultan—typically made decisions based on political calculations designed to produce a strategic result, such as when and how to fight an approaching enemy, how to maximize tax revenues, and how to appease a hungry and angry population. These may seem like political, even secular, tasks to the modern mind. Likewise, jurists mainly focused on what seem like religious activities: interpreting religious texts—determining how to pray, conclude

[43] Hallaq, *The Origins and Evolution of Islamic Law*, 32.

[44] Ibid., 52.

[45] According to Fred Donner, "Muhammad's political successors (with the possible exception of Abu Bakr) at first bore the title *amir al-mu'minin*," which means commander of the Believers, and it was only at the end of the first Islamic century that the sources testify to the use of the term caliph. Donner, *Muhammad and the Believers*, 98–99.

[46] Kennedy, *The Prophet and the Age of the Caliphates*, 200. Kennedy makes the important point that economic, social, and cultural life often thrived in this period of the caliphate's disintegration. Ibid., 200–201.

[47] Jurists in turn found ways to explain this situation in a manner that maintained the supremacy of the caliphate. See, for example, the summary discussions of the views of al-Māwardī, al-Juwaynī, and al-Ghazzālī in Lambton, *State and Government in Medieval Islam*, 83–129. See also Crone, *God's Rule*.

[48] Some did not, however. The Fatimids proclaimed their own caliphate and their ruler called himself the caliph. Kennedy, *The Prophet and the Age of the Caliphates*, 204.

[49] Ira Lapidus used this religious–secular distinction: "From the middle of the tenth century effective control of the Arab-Muslim empire had passed into the hands of generals, administrators, governors, and local provincial lords; the Caliphs had lost all effective political power. Governments in Islamic lands were henceforth secular regimes—Sultanates—in theory authorized by the Caliphs, but actually legitimized by the need for public order." He concludes that "religious and political life developed distinct spheres of experience, with independent values, leaders, and organizations." Lapidus, "The Separation of State and Religion in the Development of Early Islamic Society," 364. The cases discussed in this book show that such a stark division between the two spheres calls for revision.

a contract, or marry, for instance—and advising people individually or applying these rules in court as judges.

The usefulness of the labels "political" and "religious" ends here, however, and actually the labels create several conceptual problems that have led to misunderstandings in the study of Islamic legal history. First, categorizing the Mamluk sultan as political and the jurists as religious creates the misperception that the sultan did not have religious concerns or influences (and when he did it was exceptional) and that the jurists did not engage in politically strategic behavior or use concepts of public welfare in their own interpretive process.[50] As the cases in this book show, the two were not so neatly divided along these lines. More significantly, the label of "political" ignores the fact that the Mamluk sultans, like many other Sunni rulers, presented themselves as defenders of Sunni Islam.[51] They undertook the fundamental duties demanded of a ruler of a Muslim polity: establishing prayer, collecting *zakāt*, appointing judges, carrying out punishments, and facilitating the pilgrimage. These are not isolated examples of a political entity taking an interest in the "religious" but rather some of the very core functions of the ruler.

A more precise categorization uses the terms "doctrinal" and "policy" to describe these sources of authority. These are translations of the Arabic terms of *fiqh* and *siyāsa* that the scholars themselves used.[52] Policy as a source of authority draws from and is based on public interest, necessity, and political expediency, and it is expressed in these terms; doctrinal authority is in the form of rules derived from source texts using an interpretive methodology that developed and eventually became widely shared among Sunni Muslims. These two sources, doctrinal and

[50] See discussion in Fadel, "Adjudication in the Mālikī *Madhhab*," 79–91.

[51] Haarmann, "Joseph's Law," 56.

[52] Vogel, *Islamic Law and Legal System*, 171. Frank Vogel explains the difficulty in English terminology:

> As labels for their two perspectives, we might use terms like ruler law and 'ulamā' [religious scholars, jurists] law. But this terminology would be awkward, as well as culturally hybrid. We choose to use instead two terms from Islamic tradition (though this creates some risk that, being taken from the fiqh tradition, they will be misread and skew the discussion toward fiqh's own viewpoint). As a name for law, legal conceptions, and legal institutions viewed from the 'ulamā' perspective, we use the term fiqh. As a name for law, legal conceptions, and legal institutions viewed from the ruler's perspective, we use the term *siyāsa* (literally, "policy" or "conduct of affairs").

Ibid. Vogel further notes that in the modern period,

> the contrast between 'ulamā' and ruler perspectives has not been rendered as between fiqh and siyāsa, but rather as between sharīʿa and siyāsa. . . . But we do not so render the distinction here because to do so prejudices such crucial issues as whether (or when) siyāsa should not be understood as part of sharīʿa, alongside fiqh; or how 'ulamā' and qāḍīs [judges] may legitimately exercise some of the powers of siyāsa themselves, within a venture larger than the fiqh of their books; or whether (or when) the criteria of Islamic legitimacy to be applied to a ruler's actions diverge from those that the 'ulamā' assert should apply. Even the most recent studies stumble over this problem . . . seemingly, the use of 'sharīʿa' imports constant confusion. For example, if we were to use the usual terminology, we could easily fail to recognize that this common identification of fiqh and sharīʿa in itself represents a signal ideological success for the 'ulamā'.

Ibid., 172.

policy, combined in the office of *muḥtasib* to shape and influence his actions and, in turn, those of the people who received and reacted to his orders.

The doctrine of the jurists

By the tenth century, Sunni Muslim jurists had generally reached agreement on a theory of jurisprudence. In terms of textual sources, the Prophetic traditions, recorded in individual reports (*ḥadīth*), came to be agreed upon as the second source alongside the Quran, which had always been accepted as the word of God and primary source of Islamic law. Jurists recognized an interpretive process of *ijtihād*, whereby new rules could be arrived at from existing ones mainly through analogical reasoning (*qiyās*) without any one conclusion precluding the possibility of others. The doctrinal products of *ijtihād* were thus only probable. However, if enough scholars agreed on a conclusion, they could strengthen the authority of an *ijtihādī* view through consensus (*ijmāʿ*). Consensus and *qiyās* form the third and fourth of what are traditionally referred to as the sources of Islamic law, with the Quran and Prophetic *sunna* as the first and second.[53]

Over time, jurists clustered around prominent learned individuals and their methodologies and doctrinal results. This led to the development of a *madhhab*, meaning the path or way followed. This term is usually translated into English as "school"; as an intellectual school, it is a group of jurists loyal to the collective doctrine and the specific methodology worked out by the school and attributed to the school's eponym.[54] The strengthening of the schools meant that the doctrinal works of their eminent jurists began to serve as the starting point for legal inquiry. The typical mode of deriving a new rule moved away from *ijtihād* and toward *taqlīd*, which involved accepting the school's doctrine without a need to confirm its correctness in the underlying proof texts.[55] By the Mamluk period, the schools were well developed, and juristic activity generally took place within their methodological and substantive confines.[56]

All four Sunni schools (Shāfiʿī, Mālikī, Ḥanafī, and Ḥanbalī) were represented among Egypt's scholars in the Mamluk era, although there were far fewer Ḥanbalī scholars resident in the region than those from each of the other schools. At the

[53] For general introductions to Islamic law, see Hallaq, *An Introduction to Islamic Law*; idem, *The Origins and Evolution of Islamic Law*; idem, *Sharīʿa*; Schacht, *An Introduction to Islamic Law* (some of the material should be considered revised by subsequent research but it is still a good introductory text).

[54] Hallaq, *The Origins and Evolution of Islamic Law*, 152.

[55] Jackson, *Islamic Law and the State*, 79. According to Sherman Jackson, "[B]y the later middle ages the activities of the individual jurist came to be significantly circumscribed by his membership in a particular *madhhab*. The *madhhab*, moreover, clearly became the context within which all interpretive activity took place. . . . *[I]jtihād* and *taqlīd* represent not mutually exclusive linear moments in Muslim history but rather competing hegemonies that stood (and continue to stand) in perpetual competition with each other. . . . *Ijtihād* dominated in the formative period, but *taqlīd* gains the upper hand from about the 6th/12th century on." Ibid., 77.

[56] Ibid., 77–78. The intent of this brief summary of *ijtihād* and *taqlīd* is not to evoke the larger debate of "Was the Gate of Ijtihad Closed?," as Wael Hallaq's 1984 article was titled, or a discussion of the nuances of each term, but rather simply to indicate that the framework of the four schools in the Mamluk era extensively controlled juristic activity.

beginning of the period, the Shāfiʿī school was dominant, but only newly so. Ṣalāḥ al-Dīn (Saladin), the first Ayyubid ruler, was a Shāfiʿī. While his efforts (and those of subsequent Ayyubids) focused on bolstering Sunnism generally against a possible Fatimid Shiʿi return, the teaching of Shāfiʿī law received more support in terms of *madrasa* endowments, although the teaching of Mālikī, Ḥanafī, and, to a lesser extent, Ḥanbalī law was also sponsored. While not the preferred school of the Ayyubids, Mālikism held a remnant of special significance as the favored school prior to the Fatimids; at the time of the Fatimid establishment of Cairo, the judge of Egypt was Mālikī.[57]

The jurists' *fiqh* books typically cover a common range of topics, in the two broad categories of ritual and transactions, and typically are limited to the doctrine of the author's school (although references to other schools are certainly made and many types of juridical writings are explicitly comparative among schools). The chapters on ritual always come first and usually in a fixed order: purity, prayer, *zakāt* (alms tax), fasting, and pilgrimage. The range and order of the topics included as transactions differ among the schools and from scholar to scholar, and are often further subdivided into sales, marriage, and injuries. Topics include sales, partnership, loans, gifts, inheritance, bequests, marriage, divorce, custody, torts, *ḥadd* offenses, warfare (*jihād*), judges and judging, evidence, testimony, and slave manumission.[58] It is worthwhile to note what is not included in a typical book of *fiqh*. Whereas judges and judgeship are treated towards the end (where the procedurally-oriented chapters cluster), the *muḥtasib* is not discussed in any systematic way, nor are there chapters on the topics of the ruler (named sultan or otherwise) or the concept of *siyāsa* (although each may be mentioned in passing throughout).[59] Discretionary punishment (*taʿzīr*), a concept discussed below, is typically mentioned in *fiqh* books, usually in the chapter on *ḥadd* (see below) although it is not examined in the level of detail that the *ḥadd* offenses receive.

Jurists generally categorized the legal status of a particular act according to the scheme of required (*wājib*), recommended (*mandūb*), permissible (neutral) (*mubāḥ*), reprehensible (*makrūh*), or forbidden (*ḥarām*).[60] For example, the four schools agree that fasting during the month of Ramadan is required for adults. However, anyone who becomes ill while fasting may either continue or cease the fast, both of which are permissible options. The five daily prayers are obligatory, while supererogatory prayers are just that—merely recommended. Of the forbidden acts, a small category called *ḥadd* (meaning "limit") includes those that are identified in the Quran and that have punishments prescribed in the Quran or in some cases in the *ḥadīth*. *Ḥadd* offenses as generally agreed upon by the scholars are unlawful sexual intercourse

[57] Jackson, *Islamic Law and the State*, 53–54.

[58] For a summary of the typical contents of a *fiqh* book and the relative size of the chapters, see Hallaq, *Sharīʿa*, 551–555.

[59] Ibn al-Rifʿa (d. 1310), who was a *muḥtasib* in Fustat, did include in his *fiqh* book a short chapter on the duties of the sultan. Ibn al-Rifʿa, *Kifāyat al-nabīh*, 18:3–36. For an example of the passing treatment of the *muḥtasib* in *fiqh* books, see al-Shirbīnī, *Mughnī al-muḥtāj,* 6:10–11, which includes a brief discussion in the chapter on *siyar* (warfare) of the *imām*'s duty to appoint a *muḥtasib*.

[60] Hallaq, *Sharīʿa*, 84. The Ḥanafīs further subdivided the category of "required." Ibid., 86.

(*zinā*), unfounded accusation of *zinā* (*qadhf*), drinking wine (*shurb al-khamr*), theft (*sariqa*), and highway robbery (*qaṭʿ al-ṭarīq*).[61] Some scholars, Shāfiʿīs in particular, considered homicide and bodily injury *ḥadd* offenses, and some included apostasy (*ridda*).[62] For each crime, the jurists detailed a precise set of elements that must be met along with strict evidentiary standards; further, any doubt about the law or the evidence should avert a *ḥadd* conviction.[63]

While the jurists produced elaborate rules of procedure and punishment for *ḥadd* offenses, for the vast majority of the other acts that were considered wrongful, they did not state the specific punishment or the means by which an official could force compliance or desistence.[64] These other acts that a judge or other official determined to be wrongful were punishable under the heading of *taʿzīr*, meaning "prevention, correction, or chastisement."[65] Jurists typically held that a *taʿzīr* penalty should not exceed the lowest *ḥadd* penalty, but they disagreed in their determination of the lowest *ḥadd* penalty.[66] Abū Ḥanīfa, for example, took the

[61] Peters, *Crime and Punishment in Islamic Law*, 53–57; Hallaq, *Sharīʿa*, 310.

[62] Hallaq, *Sharīʿa*, 311. Homicide and injury are not *ḥadd* crimes, according to the jurists who held this position, because, according to their definition, *ḥadd* crimes are entirely or predominantly a violation against God. Since the victim or victim's family can choose retaliation (*qiṣāṣ*) or payment from the perpetrator, homicide and injury are primarily crimes (or, more precisely, intentional torts) against humans, not God, according to this view. Peters, *Crime and Punishment in Islamic Law*, 53. Homicide and injury then form their own category of offenses, called retaliation (*qiṣāṣ*), in reference to the punishment.

[63] Peters, *Crime and Punishment in Islamic Law*, 54; Rabb, "Islamic Legal Maxims as Substantive Canons of Construction."

[64] In his chapter on classical doctrine, Rudolph Peters covers *ḥadd* crimes in depth and then mentions briefly the concept of "discretionary punishment on the strength of *taʿzīr* and *siyāsa*," noting, though, that "in practice, however, *taʿzīr* (together with *siyāsa* . . .) was the most important heading under which punishment was administered." Peters, *Crime and Punishment in Islamic Law*, 65–66. Likewise, Wael Hallaq noted in a brief discussion of *taʿzīr* that "in practice, *taʿzīr* appears to have been the most common of all punishments, though often entirely lacking in obvious physical violence." *Sharīʿa*, 323. The fact that *ḥadd* crimes are so easily studied and examined in *fiqh* books makes them, circularly, the subject of voluminous study and examination, whereas discretion requires investigation largely from historical sources rather than doctrinal ones.

[65] Vogel, *Islamic Law and Legal System*, 223. *Taʿzīr* also includes attempted and inchoate offenses. A discrete third category of punishment carried out by an official for wrongful behavior refers to acts that are required as expiation of a wrongdoing (*kaffāra*), and *taʿzīr* is often defined as applying to wrongful acts that are not otherwise considered *ḥadd* or *kaffāra*. See al-Shirbīnī, *Mughnī al-muḥtāj*, 5: 522. Jurists typically did not provide detailed lists of wrongful acts punishable by *taʿzīr* even if they included a chapter in *fiqh* books on this topic, probably due to the potential length and level of detail that such a broad category would entail. For example, the Ḥanafī al-Sarakhsī identified some wrongs punishable under the heading of *taʿzīr*, including the sale of wine by a Muslim; the wrongful taking of another's property that fails to meet the criteria of the *ḥadd* crime of theft; and the threatening by one of another with a sword. For each of the wrongs identified, however, al-Sarakhsī did not specify the appropriate level of *taʿzīr*, such as the number of lashings or beatings (other than that they may not exceed the lowest *ḥadd* penalty, as discussed below) because it is for the relevant official to determine based on contextual factors. Al-Sarakhsī, *Kitāb al-Mabsūṭ*, 24:35–37. Al-Shirbīnī provided a list of wrongful acts that do not warrant punishment (at least not if committed the first time). Al-Shirbīnī, *Mughnī al-muḥtāj*, 5:523–524. For a discussion of the general theory of *taʿzīr*, see Johansen, "Eigentum, Familie und Obrigkeit im hanafitischen Strafrecht," 349–420. Christian Lange discusses examples of *taʿzīr*, primarily from the Seljuk period. Lange, *Justice, Punishment and the Medieval Muslim Imagination*, 215–243.

[66] In his discussion of the *muḥtasib* in *al-Aḥkām al-sulṭāniyya* (discussed below), al-Māwardī presented a standard view of the limits of a penalty carried out under the heading of *taʿzīr*—it must

position that the maximum *taʿzīr* should be thirty-nine lashes since the lowest *ḥadd* penalty is forty lashes for a slave who drinks wine (*khamr*). Others argued that the *taʿzīr* maximum should be seventy-nine lashes, calculated from a free person drinking *khamr*, while others referred to a *ḥadīth* that not more than ten lashes should be given in a case of non-*ḥadd*.[67] The Mālikīs, however, did not impose a limit on the penalty that can be given under the heading of *taʿzīr*.[68] *Taʿzīr* penalties were not restricted to lashings, but depended on the discretion of the judge or other presiding official to determine, based on factors such as the seriousness of the act itself, the identity and characteristics of the perpetrator and the victim, any mitigating or aggravating factors, and the need for deterrence.[69]

The policies and orders of the sultan

The Mamluk sultans and their military apparatus carried a very different type of legal authority than the jurists. Their power was tangible and ever-present: it was hard for the population to resist the orders of a sultan who rode through the city with a troop of armed amirs. They did not legitimate their reign by military strength alone, though. From the sultan's perspective, maintaining the institution of the caliphate, in return for which the sultan received a delegation of authority from the caliph, validated his empire in the name of Islam. After the invading Mongols killed the caliph in 1258 in Baghdad, the newly proclaimed Mamluk Sultan Baybars confirmed a man claiming to be an Abbasid and recognized him as the next caliph, al-Mustanṣir; al-Mustanṣir then confirmed Baybars as sultan. Sultan Baybars gave him an army in order to re-conquer Baghdad, but he was killed before even reaching it. There was no caliph until Baybars recognized another man, who also claimed to come from the Abbasid family, as the new caliph

not reach the level of a *ḥadd* penalty. He did not elaborate details of this distinction, however. Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 300.

[67] Vogel, *Islamic Law and Legal System*, 248; al-Qarāfī, *Al-Furūq*, 4:1313; Peters, *Crime and Punishment in Islamic Law*, 67. See Lange, *Justice, Punishment and the Medieval Muslim Imagination*, 216–218. If the offense is related to a *ḥadd* offense (such as when the high evidentiary standards of *ḥadd* cannot be met yet other elements of the wrong have been proven), some argued that the *taʿzīr* should be less than the corresponding *ḥadd*, so that, for example, if the judge or *muḥtasib* is persuaded that the accused consumed *khamr* but there is neither the appropriate eyewitnesses nor an evident smell on the accused's breath (two possible ways of proof, depending on the school), then the punishment should be no more than either thirty-nine or seventy-nine lashes (depending on the status of the offender). Peters, *Crime and Punishment in Islamic Law*, 67.

[68] Al-Qarāfī, *Al-Furūq*, 4:1313. While this view seems to suggest that there is no limit for the punishment of lashings, a separate issue is whether there is any limit on other forms of punishment, including the specific question of whether execution may be carried out as *taʿzīr*. The Mālikīs permitted this in certain situations of serious crimes that threatened public order. Fadel, "Adjudication in the Mālikī *Madhhab*," 97–98. The other Sunni schools also contemplated *taʿzīr* execution for serious offenses. Peters, *Crime and Punishment in Islamic Law*, 67. The use of execution as punishment in a non-*ḥadd* context will be seen in Case 9.3.

[69] Al-Qarāfī, *Al-Furūq*, 4:1313; Vogel, *Islamic Law and Legal System*, 248. According to al-Shirbīnī, the relevance of the identity of the perpetrator means that a person of high status should be punished more lightly on the grounds that less punishment is required to produce a deterrent effect. Al-Shirbīnī, *Mughnī al-muḥtāj*, 5:522. In this calculation, the official could also decide not to punish at all.

al-Ḥākim, who stayed in Cairo during Baybars' rule but was so marginalized as to have no real voice in governance.[70]

As rulers of an Islamic empire, the Mamluks presented themselves as defenders of the faith. To that end they established mosques, endowed schools, and gave substantial support to other charitable projects such as hospitals. The Mamluks also considered themselves the guardians of the two holiest cities, Mecca and Medina. Each year the sultan or his delegate led the pilgrims from Cairo, and brought with them the covering for the Kaʿba in Mecca. This symbol of Mamluk guardianship was so important that Sultan Qalāwūn made the local tribe of Mecca swear that only the Mamluks would be allowed to provide the covering, and that the Mamluk banner would be displayed in front of those of all other dynasties. The Mamluks also patronized Jerusalem, the third city in the hierarchy of holiness, and in particular the Dome of the Rock.[71]

The sultan issued specific orders and generally applicable rules that were obligatory for the population. The sultan decided when to go to war, and he might levy a special tax to raise funds for a military campaign. He attempted to ensure that the food supplies of the sultanate were distributed appropriately and that no one area was threatened by a lack of food. The sultan also investigated and punished crimes, either himself or using his apparatus of administrators or amirs. For example, in a case in 1515 of sexual infidelity involving slaves who then murdered their owner, Sultan al-Ghawrī apprehended the slaves, who confessed to committing the murder and disposing of the body. The sultan then personally ordered the perpetrators to be hanged near one of the city's gates. Rather than sending the case to a judge, the sultan asserted his own jurisdiction and kept the case himself to adjudicate and punish.[72]

The *siyāsa* authority of the sultan and his apparatus is policy- or order-based, with its putative justification of serving the needs of the public. The need for food could prompt the sultan to summon grain supplies from the provinces; the threat of external enemies could cause the sultan to call out the troops. The sultan was not always attentive to the public at large, though, and might also act to suit his own personal needs or those of his amirs, even at the expense of the population. As rulers of the empire and guardians of Islam, the sultans also were concerned with legal doctrine as produced by the jurists. Although they did not personally write *fiqh*

[70] Jackson, *Islamic Law and the State*, 50. Jackson commented that Baybars did not actively seek to re-establish the caliphate—instead these claimants sought him out and persuaded him of their credentials—and that Baybars would have let it die out naturally. Ibid. Baybars may not have appreciated fully the benefits of maintaining the caliphate, but it eventually served as a legitimating force.

[71] Little, "Religion under the Mamluks," 171–172 (noting that "both the interior of the Dome of the Rock and the esplanade which surrounds it owe much of their appearance, even today, to the patronage of Sultan al-Malik al-Nāṣir Muḥammad"); Jackson, *Islamic Law and the State*, 51.

[72] Petry, "Disruptive 'Others' as Depicted in Chronicles of the Late Mamlūk Period," 183. Carl Petry identified in this article many cases in which no judge was involved but rather the sultan handled the whole matter, determining and carrying out punishment. See also his forthcoming book on crime and punishment in the Mamluk period.

books or issue legal opinions, they certainly paid attention to the formulation and application of the law as it affected their interests.[73] Their knowledge of doctrine came mainly from jurists who assisted them, either informally or in appointed positions. They may even have had an influence on the substantive results of the jurists' own work, but it is difficult to discern the effects of contextual changes on doctrine because typically jurists did not discuss the prevailing political situation at the time of writing or how it affected their interpretive process.[74]

The sultan and his apparatus had extensive punishment power, mainly through *taʿzīr*, the residual category that encompasses all sinful acts that do not fall under another heading.[75] While judges also had the authority to punish through *taʿzīr*, it "represents a reserve of authority in the ruler or officials acting on his behalf" and "has all the earmarks of siyāsa, that is, it is based in utility, elusive of regulation by fiqh rules and doctrine, tied to social and temporal circumstance, and unavoidably associated with the power of rule."[76] Behavior that could have been a *ḥadd* crime but failed one of the strict rules of procedure or substantive law may be punished through *taʿzīr*, as could any other act that the jurists determined to be wrongful. The failure to obey a command of the ruler could also be punished through *taʿzīr*.[77] As noted in the discussion on *ḥadd* and *taʿzīr* above, the jurists formulated maximum *taʿzīr* penalties that differed among the schools.

Further, the ruler had power over a small category of wrongs that had even fewer associated restrictions than *taʿzīr*. Called literally "punishment in the mode of *siyāsa*" (or punishment *siyāsatan*), the concept is used in reference to the ruler's ability to intensify the penalty of *taʿzīr* beyond the maximum allowed by the particular school and, in a much narrower category, to the ruler's ability to prevent an act that threatens public order (although the perpetrator might otherwise be innocent of any wrongdoing).[78] A widely cited example of the latter involves the

[73] The example of Ibn Taymiyya's detention by the Mamluks due to his theological positions and divorce law doctrine fits this characterization of sultanic interest in doctrine. Little, "The Historical and Historiographical Significance of the Detention of Ibn Taymiyya," 320–323; Rapoport, "Ibn Taymiyya on Divorce Oaths," 209–214.

[74] Even tracing change in legal doctrine resulting from social conditions generally is an area in Islamic legal studies that few have entered, though this is a crucial topic that needs to be pursued. A prominent example of this approach is Baber Johansen's *The Islamic Law on Land Tax and Rent*, where he is able to show change in the Ḥanafī law of "property, rent, and the taxation of arable lands . . . in the Mamluk and Ottoman periods." Ibid., 2. For example, regarding the new doctrine on rent, Johansen concludes that it

> first developed in Balkh and Bukhara during the classical period. How and when the new doctrine became the prevalent legal doctrine in Mamluk and Ottoman Syria and Egypt remains a matter for investigation. It seems clear, however, that the disappearance of peasant ownership of small holdings as an important structural characteristic of the rural society of the Near East was one of the conditions that made the new doctrine so convincing to the jurists and the rentiers in Egypt and Syria and encouraged the systematic elaboration of the new doctrine by Ottoman Hanafite jurists.

Ibid., 124.

[75] Vogel, *Islamic Law and Legal System*, 223–234.

[76] Ibid., 249.

[77] Ibid., 247; Peters, *Crime and Punishment in Islamic Law*, 65–66.

[78] Vogel, *Islamic Law and Legal System*, 250; Peters, *Crime and Punishment in Islamic Law*, 68.

Prophet's second successor, 'Umar, banishing a man from Medina because his attractiveness tempted women. Perhaps in their lust they might attempt a wrongful act with this attractive man, the reasoning apparently went. 'Umar admitted that the man had committed no wrong, but said that he would be wrong himself if he did not send the man away.[79]

Competition and cooperation

How did juristic doctrine and sultanic policy co-exist in the same polity? Did they complement each other or compete? Is there a clear hierarchy? They certainly interacted, and the earlier notion that the Mamluk rulers and the jurists occupied separate spheres of society with little connection between them must by now be considered substantially revised.[80] They formed a symbiotic relationship, each recognizing, even if tacitly at times, that their own source of authority could not govern society on its own. Beyond interaction and symbiosis, they actively competed for jurisdiction in the larger picture of the regulation of society. The resulting effect upon the population in terms of the laws and rules they were required to live by has not heretofore been well understood.

The jurists largely recognized and accepted the existence of military rulers, and some of them tried to develop detailed theories of the relationship between the rulers and jurists.[81] For purposes here, the works of jurists who presented their views on how power should be divided are relevant not for the particular details of

[79] Peters, *Crime and Punishment in Islamic Law*, 67–68. Jurists often did not distinguish between the terms *taʿzīr* and *siyāsa*, and Baber Johansen traces the blurring of these categories to al-Marghīnānī at the end of the twelfth century. Johansen, "Eigentum, Familie und Obrigkeit im hanafitischen Strafrecht," 402. In his discussion of *taʿzīr*, al-Shirbīnī provided the example of the banishment of a hermaphrodite, which al-Shāfiʿī prescribed, not because any wrongdoing had been committed but rather because it served the public interest (*maṣlaḥa*). Al-Shirbīnī, *Mughnī al-muḥtāj*, 5:524.

[80] Lutz Wiederhold commented that some traces of the idea of separate social spheres remain, a notion that he intended to dispel in "Legal-Religious Elite, Temporal Authority, and the Caliphate in Muslim Society," 203–204. Previous studies that have shown intersections between social domains of Mamluks and scholars include Haarmann, "Arabic in Speech, Turkish in Lineage"; Berkey, "'Silver Threads among the Coal'"; idem, *The Transmission of Knowledge in Medieval Cairo*; Lapidus, *Muslim Cities in the Later Middle Ages*, 107–115; and Gilbert, "Institutionalization of Muslim Scholarship and Professionalization of the '*Ulamā*' in Medieval Damascus." Steven Humphreys presents this as a matter of the scholars' "collaboration" with the rulers, "intended to secure a degree of law and order and an Islamic way of life." Humphreys, *Islamic History*, 202. The question that needs to be considered is the extent to which these were also goals of the rulers, approached from their own perspectives.

[81] The Mamluk-era jurist Ibn Taymiyya, for example, dealt explicitly with the relationship between jurists and rulers. In his view, *fiqh* itself governed the realm of policy decisions, for which it set both the parameters and the rules. He called this *al-siyāsa al-sharʿiyya*, meaning *siyāsa* limited by broader concepts of Sharia. Under this scheme, the ruler may issue orders as needed for the public good provided they do not contradict the Sharia, or as long as there is no text on the matter, thereby making "siyāsa sharʿiyya the virtual inverse of fiqh as a law-making method." Vogel, *Islamic Law and Legal System*, 174. In Ibn Taymiyya's view, the jurists would be the ones to decide whether contradictions took place, thus privileging their role in the Sharia system. Ibn Taymiyya was less influential in his own time than he is today (Rapoport and Ahmed, "Introduction," in idem [eds.], *Ibn Taymiyya and His Times*, 16), and the point here is not to assert the prevalence of his views but rather to indicate that these kinds of discussions and concerns existed in the Mamluk period, even if few might have agreed with his particular approach or even have been aware of it.

those views but rather because they show that the concepts of and divisions between doctrine and policy were of concern to jurists in their own times. It is difficult to develop any general sense of how the sultans thought about their relationship to the jurists as a theoretical matter, but it is clear even from the historical materials relied upon in this book that the sultan (and his administration generally) did engage in attempts to expand their power vis-à-vis the jurists, and that sometimes they had to contract that power in the face of juristic protest.

Thus, placing the actions of the *muḥtasib* in a doctrine-policy, or *fiqh-siyāsa*, framework grows out of the historical material itself. For example, if the sultan demanded from a merchant a new tax, to be collected by the *muḥtasib*, and the merchant argued that the tax was not doctrinally legitimate, what would happen? Could jurists come to the rescue with their arguments, and how should the *muḥtasib* handle their appeal? Would the sultan defer to the opinion of the jurists? The events discussed in this book will provide some examples of these kinds of tensions among competing jurisdictions, including how the *muḥtasib* embodies or gets caught up in them and to what result for the people subject to the *muḥtasib*'s orders.

Mamluk legal institutions and actors

This final section explains the legal landscape of which the *muḥtasib* was a part before turning directly to the *muḥtasib* in the next chapter. In presenting the Mamluk legal system here, I describe the institutional boundaries theoretically, and so they will seem far more defined than they were in practice. Officials surely overlapped and competed for jurisdictions, and some examples of this will be seen in the following chapters.

The courts and the judiciary

The Mamluks initially maintained the Ayyubid judicial system whereby courts of law for all four Sunni schools existed under a single chief judge, who was a Shāfiʿī.[82] This created a tension within the system, because the chief judge had the authority to review rulings made by other judges, with the result that a Shāfiʿī judge could review and reject the judgments of his colleagues from the other three schools. Sultan Baybars created deputy chief judges for the other schools and in 1265 expanded the chief judgeship to include four chief judges, one for each school, appointed by the sultan. Baybars' reasons for establishing four chief judges are not fully understood. Possibly, Chief Judge Tāj al-Dīn Ibn Bint al-Aʿazz (d. 1267) provoked the decision by refusing to accept rulings that violated Shāfiʿī doctrine,

[82] Jackson, *Islamic Law and the State*, 54. The preference for the Shāfiʿī school went beyond the judicial system. Newly arrived slave soldiers typically became Ḥanafīs upon conversion to Islam, but Mamluk sultans became Shāfiʿīs when they took the throne. Ibid., 54–55. Al-Suyūṭī reported a belief that a non-Shāfiʿī sultan could not survive on the throne but would be quickly killed. The only non-Shāfiʿī sultan at that time, he wrote, was the Ḥanafī Sultan Quṭuz (r. 1259–60), who was killed soon after he became sultan. As for Sultan Baybars, he became Shāfiʿī the day he assumed the throne. Al-Suyūṭī, *Ḥusn al-muḥāḍara*, 2:166. See also Ibn Iyās, *Badāʾiʿ al-zuhūr*, 1:308.

even though those decisions comported with the doctrine of the judge who presided over the case. The only way to reduce his authority over the other schools was to give them their own chief judges, so that they served as the final authority within their own schools.[83] Sultan Baybars may have determined that a system of four courts, each with equal power, was attractive insofar as it allowed litigants to approach the court of their own school.[84] The result of the arrangement was to give each school equal status and to prevent any one school from reviewing the rulings of another.[85] To enforce judgments, the judges depended upon the sultan's apparatus because judges did not usually carry out the punishments themselves.

Fatwa-giving and the mufti

The position of mufti, or juris-consult, was mainly an unofficial one, with certain jurists developing a reputation as someone to whom Muslims might turn for an opinion on a matter of personal concern. The petitioner could seek clarification on any topic, such as marital disputes, devotional practice, and commercial contracts, and typically sought out a mufti of the same school affiliation as his or her own. The opinion of a mufti, a fatwa, was not binding in the sense of judicial opinions that were enforced by the officials of the sultanate.[86] The same jurists often served as judge and made themselves available as a mufti, either simultaneously in their careers or consecutively, since the skills and education for the two roles were essentially the same.

The sultan and the forum for wrongs

Mamluk sultans continued the pre-existing (and pre-Islamic) tradition that invested the king with ultimate responsibility for wrongful acts that occurred in his territory. To correct these, the sultan held a forum called *maẓālim*, or "court of wrongs." The authority for the institution has been expressed in terms of *siyāsa*.[87] In principle, people could take complaints to him that could not be resolved elsewhere, particularly when they involved government officials. The sultan also

[83] Jackson, "The Primacy of Domestic Politics," 53; idem, *Islamic Law and the State*, 64. For a discussion of the four chief judges, see generally Escovitz, *The Office of* Qâḍî al-Quḍât *in Cairo under the Baḥrî Mamlûks*. For a list of all of the chief judges during the Mamluk era, see Salibi, "Listes chronologiques des grands cadis de l'Égypte sous les Mamelouks."

[84] Rapoport, "Legal Diversity in the Age of *Taqlīd*," 220. The views of Jackson and Rapoport are not mutually exclusive. Another possible explanation needs consideration: the sultan wanted to maintain and promote doctrinal diversity because it assisted him in his own array of choices as a ruler.

[85] Without adequate extant court records from Egypt for the Mamluk period, modern scholars know little about how the system of the four courts worked. It must have led to forum shopping by litigants and problems of conflicting jurisdictions. Rapoport provides a few examples of this. Rapoport, "Legal Diversity in the Age of *Taqlīd*." Research in the historical chronicles would certainly provide further information.

[86] See Introduction, n. 1.

[87] Nielsen, *Secular Justice in an Islamic State*, 32. The title of this book from 1985 persists in maintaining the impression that the sultan's function was secular, a problem noted above in the discussion of the preferable term "*siyāsa*."

might summon an alleged wrongdoer to the *maẓālim* forum. While there is little evidence of the practice of the *maẓālim* court, what does exist suggests that the sultan drew upon his sense of public welfare, or *maṣlaḥa*, along with doctrine.[88] The Mamluk sultans typically held the court of wrongs twice a week. According to protocol, the sultan sat at the highest level, unless the caliph was present, in which case the sultan sat below him, a recognition that the caliph was the grantor of all worldly authority, even if he played no actual role in the proceedings. The chief judges of the four schools of law, the *muḥtasib* of Cairo, and an array of administrative officials were also supposed to be present at the *maẓālim* tribunal.[89] The presence of the judges, and perhaps the *muḥtasib*, presumably was to ensure that doctrinal rules that might have governed a particular dispute were made known to the sultan.

Outside the *maẓālim* tribunal and on a daily basis, the sultan functioned as a sort of executive authority, issuing his orders personally, at which time they became obligatory throughout the land. Embodying the notion of sultanic order, he might determine the guilt of and punishment for wrongdoers, order the collection of taxes, or announce prices of bread. The sultan's criers would then go out into the streets and broadcast the decision. Several of the events discussed in this book involve the sultan adopting a new policy or command, followed by the statement that the order was "called out" in Cairo and Fustat.

The city's governor

Each city had a *wālī*, appointed and dismissed by the sultan, and the position was something like a combined governor and chief of police. The position clearly came under the sultan's jurisdiction and his power of policy, and amirs typically held the post in Mamluk Cairo and Fustat.[90] The *wālī* played a significant role in daily law enforcement, and the *wālī*s of Cairo and Fustat figure in many of the events discussed in this book. Often they served as the physical force accompanying the *muḥtasib* to execute the *muḥtasib*'s commands, such as by emptying bottles of wine or whipping merchants who were hoarding wheat. Sometimes *wālī*s acted on the basis of the sultan's orders, without the involvement of the *muḥtasib* or any other official, and sometimes they acted on their own accord.

Conclusions

By the time of the Mamluk sultanate, Cairo was a major metropolis with vast and thriving markets, residential areas, mosques, *madrasa*s, and a Citadel that served as the sultan's seat of power. The older and smaller city of Fustat, about two miles to the south, remained an important urban center, linked to Cairo physically and

[88] Ibid., 43–48.
[89] Ibid., 56.
[90] See Petry, *The Civilian Elite of Cairo in the Later Middle Ages*, 23, 215.

bureaucratically, and formed a less significant administrative unit with its own set of officials, such as judges, *wālī*, and *muḥtasib*. While the Mamluk elite tended to reside in Cairo, they had important connections to Fustat, such as through the Fustat grain storehouses where amirs kept at least some of the stocks they received as part of their payment for service to the sultan.

Daily life at all levels, ranging from personal devotional practice in the case of Muslims to marketplace purchases for all, was governed by both the doctrine produced by the jurists and the policy decisions of the sultan, two distinct and mutually dependent bases of authority. The methodologies used by the jurists are fairly well documented in the literature of *uṣūl al-fiqh* (lit. "roots of the *fiqh*," or jurisprudence). For the rulers, the methodology of *siyāsa*-based power can best, and perhaps only, be understood by studying what rulers actually did, since the writings that do attempt to define the power of the rulers were written by jurists, whose goal was typically to circumscribe it. How the Mamluk sultans thought of their power in general and in relation to the jurists is an important and yet elusive topic.

Doctrine and sultanic policy were put into effect through legal institutions. Some jurists served as muftis, and provided authoritative answers to individual questioners, to judges who faced complex legal issues in cases before them, and even to the sultan. The sultan appointed jurists to serve as judges, and early in the Mamluk period, four parallel courts with equal powers were established, one for each of the Sunni schools of law. The sultan's direct power was exercised through several channels. An official forum, the *maẓālim* court, allowed the sultan to dispense justice as he saw necessary to correct acts he determined wrongful and which did not seem to be addressed by some other official. The sultan also embodied his *siyāsa* power, and could issue orders at will and instruct his officials to carry them out. One key official in the sultan's service was the city's *wālī*, who acted as a combined governor and chief of police. His authority came directly from the sultan, and he might act on his own accord or under the specific instructions of the sultan, depending on the particular matter at hand. The position of the *muḥtasib*, to which the next chapter is devoted, has a place in the domains of both *fiqh* and *siyāsa*, straddling the two sources of authority and guided theoretically and practically by the jurists and the rulers.

2

Introducing the *muḥtasib*

The discussion of the Mamluk legal system in Chapter 1 left off at the position of the *muḥtasib* as a legal actor governed by the dual authority of *fiqh* and *siyāsa*. This chapter turns fully to the *muḥtasib*, beginning with the origins of the position, including the relevant Quranic verses. The Quran does not call for or even mention a *muḥtasib*, but it does instruct Muslims to "command right and forbid wrong," a charge that became associated with an official who had several different titles before that of *muḥtasib* became most prominent. Jurists attempted to define the responsibilities of the *muḥtasib*, whose jurisdiction seemed less precise than that of other legal actors, such as the mufti or judge. The clearest and most influential explanation of the *muḥtasib*'s scope of responsibility was given by the eleventh-century Shāfiʿī scholar al-Māwardī in his book of public law, *al-Aḥkām al-sulṭāniyya*, which is examined in the second part of this chapter.

Moving to the specifics of the Mamluk period, the third part outlines the details of the position of *muḥtasib* in Mamluk Cairo and Fustat, mapping out the physical jurisdiction of the officials. The chapter then studies the appointment document by which the sultan appointed the *muḥtasib*. This document provides a sense of the sultan's conception of the official's jurisdiction and duties. Manuals written to guide the official helped to instruct him on the rules of right and wrong in simplified form. These manuals, addressed next, served as a practical guide to doctrine for the *muḥtasib*. Finally, this chapter provides a sense of the type of individuals who held the position of *muḥtasib* in Mamluk Cairo and Fustat, based on biographical information. By pulling together all of the necessary background material related to the position, ranging from the Quranic conceptions to the specifics of the men who served as *muḥtasib* in the Mamluk period, this chapter does the work necessary to begin the specific case studies in Chapter 3.

Commanding right and forbidding wrong

Several Quranic verses contain the language of commanding right and forbidding wrong, as in Q 3:104: "Let there be one community of you, calling to good, and commanding right and forbidding wrong; those are the prosperers."[1] These verses do not specify who is supposed to do the commanding and forbidding (beyond the community generally or perhaps in two cases those engaged in warfare),

[1] Similar phrasing is found in Q 3:110, 3:114, 7:157, 9:71, 9:112, 22:41, and 31:17. These verses are discussed in Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, 13–14. Translation of Q 3:104 is from ibid.

to whom, for what purposes, or even what behavior is considered right and wrong, nor was the view of early scholars who examined these verses uniform.[2] According to Michael Cook, exegetes determined that the duty was "to be performed by individual believers to each other. . . . The overall effect is to insert the duty into the daily life of the community in a far more concrete way than the Koran, read as naked scripture, would seem to require."[3] Some historical sources describe individual Muslims carrying out this duty, such as the goldsmith who famously confronted the Abbasid leader Abū Muslim, verbally criticized him, and then was executed. The goldsmith was "known as a devotee of commanding right" and clearly did not listen to the learned advice "that this duty (unlike others) was not one that a man could undertake alone."[4]

The concern of this book is not the duty as it might apply to or was undertaken by individuals on their own, such as the goldsmith, but rather those people designated by a ruler to carry out the duty on behalf of that authority in a position that came to be known as *muḥtasib*.[5] The scholars who elaborated on the individual's duty typically did not discuss the appointed *muḥtasib*.[6] Very little is known about the origins of the official or the terminology used to describe the position, which includes not only *muḥtasib* but also two phrases meaning "guardian of the market": *ṣāḥib al-sūq* and *ʿāmil al-sūq*. For purposes here, the origins of the position are secondary in importance to the conclusion that by the time of the Mamluk period the office of *muḥtasib* was well established and formed an important part of the legal system. Nevertheless, a brief review of the existing views about origins is helpful background and indicates how little is known of the official's institutional history.

The standard account of the *muḥtasib*'s origins focuses on market regulation, beginning with the assumption that in pre-Islamic Arabia, markets had their own regulatory and dispute resolution mechanisms.[7] These markets continued in the early Islamic period and others developed that, too, needed some kind of system of

[2] Quranic exegetes debated the meaning of the term "right" (*maʿrūf*) and "wrong" (*munkar*). Some limited right and wrong to particular acts, while al-Ṭabarī (d. 923) in particular said that commanding right refers to all that God and the Prophet commanded and forbidding wrong likewise refers to all that they forbade. Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, 24. Later jurists who addressed the topic do not seem to have reached a clear view. A basic question is whether *maʿrūf* and *munkar* match any of the five legal classifications that scholars developed. *Maʿrūf* seems to have been treated as referring to the same acts covered by *wājib* (required) but the treatment of *munkar* is more complicated. According to al-Ghazzālī (d. 1111), for example, *munkar* contains two categories: forbidden (*ḥarām*) and disapproved or repugnant (*makrūh*). In his view, preventing a wrong that is merely *makrūh* is commendable but not obligatory. Ibid., 442.

[3] Ibid., 31.

[4] Ibid., 6–7.

[5] Michael Cook treats in great detail the general duty; he does not cover the specific role of the *muḥtasib*. Ibid., xii. Since I focus in this book on the specific role of the *muḥtasib*, I largely do not rely on literature that discusses the general duty unless it bears on the practice of the *muḥtasib* specifically.

[6] Cook points out one exception to this among the exegetes in particular: the Quranic commentary of Niẓām al-Dīn al-Naysābūrī (fl. 14th century), *Gharāʾib al-Qurʾān*, which is basically a highly condensed version of al-Māwardī's discussion of the *muḥtasib* (discussed below). Ibid., 21 n. 36.

[7] R. P. Buckley asserts, however, that there is no mention of any official in the pre-Islamic period charged with market regulation responsibilities. Buckley, *The Book of the Islamic Market Inspector*, 2; idem, "The *Muḥtasib*," 59.

regulation. The Prophet reportedly appointed people to look after the markets in Medina—including a woman—under the title *ʿāmil al-sūq* or the virtual synonym *ʿāmil ʿalā al-sūq*. The second successor to the Prophet, ʿUmar b. al-Khaṭṭāb, continued on this path, also appointing at least one woman to oversee Medinan markets. The appointment of market inspectors persisted throughout the Umayyad period. When some members of the Umayyad family fled westward upon the rise of the Abbasids, they took the concept of the market inspector with them. In the Umayyad-era sources of the Islamic west the position thus appears as *ṣāḥib al-sūq*, likewise with the meaning of guardian of the market. This explanation usually comes with the assertion that the Umayyad market inspector focused exclusively on market affairs and not on a larger concept of commanding right and forbidding wrong.[8]

As for the development of the position called *muḥtasib*, the standard account asserts that in an effort to "Islamize" the institutions of the former Umayyad rulers, the Abbasids gave what had been a market inspector position wide-ranging powers that went beyond market matters and connected it to the broader Quranic notion of commanding right and forbidding wrong. Linking the term *muḥtasib* to the Quranic concept was thus a later Abbasid-era development, intended to infuse the position with a broad Islamic component. The position continued in the central and eastern Islamic lands under this name, fully flourishing in the Fatimid, Ayyubid, and Mamluk eras in particular.[9]

This standard account of origins, beginning with the narrow concept of market inspector and becoming an Islamic *muḥtasib* with fuller powers under the Abbasids, is not entirely persuasive. For one, Patricia Crone has suggested that "the term *muḥtasib* must be as early as that of *ṣāḥib al-sūq*: the two terms merely happen to be attested at slightly different times in the extant literature."[10] Also, the claim that market regulation under the *ṣāḥib al-sūq* was purely commercial, and not infused with legal and ethical concerns derived from the Quran, is misplaced. The writings that make this claim often list the Quranic verses that deal with the obligation to give proper weights and measures and the many *ḥadīth*s on this topic, and then go on to conclude that market regulation was largely a secular operation. These accounts seem to assume that if an area of regulation is undertaken today by a

[8] Buckley, "The *Muḥtasib*," 60–63; idem, *The Book of the Islamic Market Inspector*, 5.

[9] Buckley, "The *Muḥtasib*," 60–67; idem, *The Book of the Islamic Market Inspector*, 5. The *Encyclopaedia of Islam* (2nd ed.) article on *ḥisba* states that

> about the time of the caliphate of al-Maʾmūn [r. 813–833], the *ṣāḥib al-sūḳ* was replaced by the *muḥtasib* . . . This change in nomenclature evidently took place within the framework of the Islamization of institutions carried out by the ʿAbbāsids, particularly during the period of the Muʿtazila; but it is difficult to tell to what extent there really took place a transformation in the spirit and content of the office of *ḥisba* . . . The classical *muḥtasib* then was characterized by the integration of his task as controller of the market within the wider duty, basically religious, of maintaining the seemly ordering of social life.

EI[2], s.v. "Ḥisba" (Cahen and Talbi). The *Encyclopaedia of Islam* (2nd ed.) does not contain a separate article on the *muḥtasib*, directing readers to the *ḥisba* article instead. The first edition did include a short entry on the *muḥtasib* (R. Levy), which was mainly a composite summary of al-Māwardī's chapter on the office, the *muḥtasib* manual of al-Shayzarī, and al-Ghazzālī's discussion of the concept of commanding right and forbidding wrong.

[10] Crone, *Roman, Provincial and Islamic Law*, 108.

modern secular authority, then it should also be called secular when performed by an early Muslim official, even when the basis for the Muslim performance derives from the texts of Islamic law.[11]

As for the origins of terminology, a prominent view sees the *ṣāḥib al-sūq* as the Arabic translation of the Greek term *agoranomos* (market inspector), an official in cities charged with checking for fraud in the market and watching over temples that were located in the market areas.[12] Under this theory, the Arabs found this position to be a useful one and retained it, although with an Arabic name. Benjamin Foster, however, has traced carefully the use of the term *agoranomos* in pre-Islamic Egypt, Syria, and Palestine to show that its usage in the sense of market inspector had ceased around the end of the third century.[13] The origins of the terms *muḥtasib* and *ḥisba* are also uncertain. *Ḥisba* is typically defined as encompassing both the duty of Muslim individuals to command right and forbid wrong and the jurisdiction of the person who is officially appointed to carry out that activity, the *muḥtasib*.[14] But how these terms came to have these meanings is a matter of speculation. Some sources claim that ʿUmar was the first to perform *ḥisba*, while others praise the fourth successor ʿAlī for engaging in *ḥisba*, but there is still no explanation for the choice of the terms *ḥisba* and *muḥtasib*.[15]

The term *muḥtasib* was used in the eleventh century by al-Māwardī to describe the official appointed to command right and forbid wrong (which he referred to as *ḥisba*), and he called any other Muslim who undertook this duty by another term, *al-mutaṭawwiʿ*, indicating that the person is an unappointed volunteer.[16] Al-Ghazzālī, who lived a half-century later (d. 1111), used *ḥisba* as a general term for commanding right and forbidding wrong, but did not explain the word choice. For al-Ghazzālī, everyone who carries out the duty is considered a *muḥtasib*. According to Michael Cook,

> What Ghazzālī fails to explain is just why he chose the word *ḥisba* as a general term for forbidding wrong, and I am not entirely clear why he did so. . . . The modern reader tends to assume that Ghazzālī is implying an analogy between the duty of the individual to forbid wrong and the obligation of the officially appointed censor (*muḥtasib*) to police morals and markets—for all that Ghazzālī has nothing to say about the duties of the censor.[17]

[11] Buckley, "The *Muḥtasib*," 63–64. The earliest extant manual was written by the Andalusian Yaḥyā b. ʿUmar al-Kinānī (d. 902) and entitled *al-Naẓar wa-l-aḥkām fī jamiʿ aḥwāl al-sūq*. It is often held up as proof of the early market-focused aspects of the official, who is referred to therein as *ṣāḥib al-sūq* or *nāẓir al-sūq*. Buckley, *The Book of the Islamic Market Inspector*, 5. The title of Yaḥyā b. ʿUmar's manual does indicate a strong concern for what occurs in the market (*sūq*), but not all of that is commercial. The marketplace was tantamount to public space, and its regulation in Yaḥyā b. ʿUmar's manual included the bathhouse (which the inspector is instructed to inspect for women who behave improperly in it) and the public behavior of Christians and Jews.

[12] See, for example, Schacht, *An Introduction to Islamic Law*, 25; *EI²*, s.v. "Ḥisba" (Cahen and Talbi). Crone summarizes this view, beginning with its original proponent Gaudefroy-Demombynes in 1939. Crone, *Roman, Provincial and Islamic Law*, 107–108.

[13] Foster, "Agoranomos and Muḥtasib," 135–136.

[14] *EI²*, s.v. "Ḥisba" (Cahen and Talbi).

[15] Buckley, *The Book of the Islamic Market Inspector*, 6.

[16] As al-Māwardī explained, the duties of the volunteer are limited in comparison to those of the official.

[17] Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, 447–448.

Cook then speculates about al-Ghazzālī's choices of *ḥisba* and *muḥtasib*. The terms (including the related verb *iḥtasaba*) suggest "doing something for God's sake, without personal or worldly motives of any kind."[18] However, "forbidding wrong is far from being the only thing that can or should be done for God's sake."[19] Further, it is difficult to say that the *muḥtasib*, an appointed official, was carrying out the duty without personal or worldly motives, since he was paid a salary for his work from the treasury (and in the Mamluk period also extracted payment from the merchants).

The term *muḥtasib* has often been translated in western literature as "market inspector," a choice possibly influenced by the many descriptions of the jurisdiction that involve commerce and commercial transactions or by the related title of *ṣāḥib al-sūq*, "guardian of the market." Such a translation of the title is, however, too narrow. As will be seen, the jurisdiction of the *muḥtasib* extended to any evident public action, whether in the fields of devotional practice, commerce, or crime. The position is better expressed as an inspector and regulator of the markets and public behavior generally.

A job description for the position of the *muḥtasib*

The most thorough theoretical work on the position of the *muḥtasib* is *al-Aḥkām al-sulṭāniyya* by the Shāfiʿī jurist al-Māwardī, who was born in Basra and died in 1058 in Baghdad.[20] No other author treated the *muḥtasib* as fully as al-Māwardī did, and chapter twenty on the *muḥtasib* in this masterful work of Islamic public law is relevant to the Mamluk-era *muḥtasib* for several reasons. Mamluk-era authors copied al-Māwardī's language, and the *muḥtasib* manuals in particular quoted al-Māwardī extensively, showing that his work was not just of theoretical interest but was used by these authors in their efforts to guide *muḥtasib*s in their work.[21] Further, al-Māwardī was interested in constitutional structure and jurisdictional concerns, and not just in the substance of the *muḥtasib*'s duties, although he commented on them in order to provide examples of his larger points. He described the *muḥtasib* as having connections to the authority of both the judge and *fiqh*, on the one hand, and the sultan and *siyāsa*, on the other. He identified the tensions

[18] Ibid., 448 and n. 136; see Ibn Manẓūr, *Lisān al-ʿarab*, 3:164–166 (entry *ḥ-s-b*).

[19] Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, 448.

[20] For a discussion of al-Māwardī in the context of other public law authors, see Lambton, *State and Government in Medieval Islam*. The perceived connection between al-Māwardī and *ḥisba* is so strong that his name has been attached to a manuscript of a *ḥisba* manual that is identical to Ibn al-Ukhuwwa's manual (discussed below). Brockelmann, *GAL*, Supp., 1:668. References within the manual indicate that it could not have been al-Māwardī's and biographical entries for al-Māwardī do not list the manual; Maurice Gaudefroy-Demombynes identified it as pseudo-Māwardī. Gaudefroy-Demombynes, "Sur quelques ouvrages de ḥisba," 456. The manual was published as al-Māwardī, *al-Rutba fī ṭalab al-ḥisba*, in Cairo in 2002. Emile Tyan's discussion of the position of the *muḥtasib* is based in large part on al-Māwardī's *al-Aḥkām al-sulṭāniyya*, along with al-Qalqashandī's *Ṣubḥ al-aʿshā* and the three *muḥtasib* manuals discussed below. Tyan, *Histoire de l'organisation judiciaire en pays d'Islam*, 2:436–462.

[21] This is true for other types of Mamluk-era literature on the *muḥtasib* as well. For example, the section dealing with the *muḥtasib* in al-Nuwayrī's encyclopedia is nearly identical to al-Māwardī's chapter on the *muḥtasib*. Al-Nuwayrī (d. 1333), *Nihāyat al-arab fī funūn al-adab*, 6:291–315.

inherent in a position that simultaneously applies *fiqh* rules and makes decisions of strategy and policy, a framework that is very helpful for approaching the Mamluk-era sources as well.[22]

Three areas of al-Māwardī's chapter on the *muḥtasib* stand out as particularly relevant to this study: the *muḥtasib*'s qualifications; the jurisdictional divisions between the *muḥtasib* and the volunteer who commands right and forbids wrong, between the *muḥtasib* and the judge, and between the *muḥtasib* and the *maẓālim* court; and the substance of the *muḥtasib*'s jurisdiction. As a preliminary matter, al-Māwardī defined the concept of *ḥisba*: "commanding right when it is conspicuously neglected, and forbidding wrong when it is conspicuously done."[23] A first significant question about the *muḥtasib* (or anyone carrying out *ḥisba*) is the meaning of conspicuous and how much investigation is appropriate to identify offenses, such as when suspicious sounds are heard from behind a neighbor's closed door.[24] Al-Māwardī specified that the *muḥtasib* may not spy on people, which involves looking beyond what takes place in the public view.[25] This rule implicitly recognizes that forbidden acts will take place in private but also considers respect for privacy to be more important than catching and punishing those acts.[26] There are exceptions, however—if the situation suggests the occurrence of an imminent crime the damage of which will not be remediable, the *muḥtasib* may spy in order to investigate. Al-Māwardī provided the examples of when the *muḥtasib* is informed by a reliable source that a man is alone with a woman in order to commit fornication (*zinā*) or a man is alone with another man in order to kill him. In these cases, the *muḥtasib* is entitled to spy and uncover the act in order to stop it. If the situation does not rise to this level of urgency, he may not so investigate.[27]

In terms of qualifications, the *muḥtasib* must be a free man, of good character (*'adl*), have sound judgment, and be strong in matters of faith. He must know what actions are obviously wrong (*al-munkarāt al-ẓāhira*), meaning that he must know

[22] Ibn Taymiyya (d. 1328) dealt with the duty generally and with the *muḥtasib* in particular in the short work published as *al-Ḥisba fī al-islām*. For Ibn Taymiyya, the *muḥtasib*'s jurisdiction was simply the commanding right and forbidding wrong that was not otherwise in the jurisdiction of any other authority, whether judges or other appointed officials. In other words, the *muḥtasib* was supposed to fill in the gaps, commanding right and forbidding wrong when it was not done by someone else. Aside from this brief sketch of jurisdiction and constitutional structure, the remainder of the work describes substantive areas of law that the *muḥtasib* should deal with and the rules that he should apply, and some of these views seem particular to Ibn Taymiyya. Thus, Ibn Taymiyya's writing on the *muḥtasib* is not particularly helpful here for purposes of placing the *muḥtasib* in the larger context of other legal actors. In subsequent chapters, the specific content of Ibn Taymiyya's view will be brought into the discussion of cases where relevant. In terms of the origins of this writing, Michael Cook remarks that *al-Ḥisba fī al-islām* is "something of a biographical puzzle" and doubts that the work was originally meant to be an independent one. Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, 151 n. 48.

[23] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 299.

[24] This topic is discussed in each chapter of Michael Cook's book, *Commanding Right and Forbidding Wrong in Islamic Thought*. See, e.g., 80–82 (defending privacy in biographical literature); 99–100 (the privacy limits according to Ibn Ḥanbal).

[25] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 314.

[26] For an explanation of the views of Sunni jurists through the thirteenth century on the notion of privacy, see Alshech, "'Do Not Enter Houses Other than Your Own.'"

[27] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 314.

what acts the jurists agreed are wrongful (*al-munkarāt al-muttafaq ʿalayhā*), but he does not need to be familiar with acts that some consider wrongful but others consider permissible.[28] This leads al-Māwardī into a contested area among the Shāfiʿī scholars: What if the *muḥtasib* is considered a *mujtahid*, able to reach his own opinion through his own *ijtihād*? May he do so and impose upon people rules about which there is disagreement? The Shāfiʿī majority opinion, also held by al-Māwardī, is that the *muḥtasib* may not impose his opinion and the results of his *ijtihād*, even if he is able and qualified to conduct *ijtihād*, nor may he lead people toward his school. The minority Shāfiʿī opinion, articulated by al-Iṣṭakhrī,[29] argued that a *muḥtasib* competent in *ijtihād* may impose his opinion resulting from his *ijtihād* on a matter of disagreement.[30]

In terms of jurisdiction, al-Māwardī began the chapter with a discussion of the differences between the *muḥtasib*, who was appointed, and the *mutaṭawwiʿ*, who volunteers to command right and forbid wrong.[31] The remainder of the chapter deals explicitly with the *muḥtasib*, and not the volunteer, but one important distinction between the *muḥtasib* and the volunteer is that the *muḥtasib* may inflict a punishment (*taʿzīr*) for wrongs committed in the open whereas the volunteer may not physically punish wrongful acts at all. Al-Māwardī specified that in punishing through *taʿzīr*, the *muḥtasib* may not exceed the *ḥadd* penalties, which is both a comment on the limits of *taʿzīr* in al-Māwardī's view (which is the Shāfiʿī position) and also implicitly a statement that adjudication of *ḥadd* crimes is beyond the *muḥtasib*'s jurisdiction, a position reinforced in the discussion of the distinction between the *muḥtasib* and the judge.[32]

Next, al-Māwardī compared the *muḥtasib* to the judge. The *muḥtasib* is more powerful than the judge in two ways. First, he has the authority to initiate an investigation of an action taking place in the open without a complaint being brought to him, whereas the judge must wait for a party to initiate a suit. Secondly, the *muḥtasib* carries the ruler's power in regard to wrongful acts. This means that the *muḥtasib* should instill fear in people in a way that a judge is not permitted

[28] Ibid., 300. On the issue of wrong as a legal category, see the discussion above. Al-Māwardī stated that a weak disagreement (either in terms of the number of jurists who disagreed or the basis for their opinion) does not detract from an otherwise juristic agreement. Ibid., 315.

[29] Abū Saʿīd al-Iṣṭakhrī (d. 939) was a Shāfiʿī jurist who also served as *muḥtasib* of Baghdad. Ibn Khallikān, *Wafayāt al-aʿyān*, 2:74–75.

[30] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 300. A related issue concerns a *muḥtasib* enforcing school-specific rules only on members of that school. For example, may a Ḥanafī *muḥtasib* reproach a fellow Ḥanafī for violating a rule of the Ḥanafī school, while allowing a Shāfiʿī to do the same act since his school permits it? Al-Ghazzālī seems to answer affirmatively. Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, 436–437. As a separate matter, the ruler may issue commands on the basis of his *siyāsa* power, including imposing a particular rule of doctrine upon the population. If the ruler instructs the *muḥtasib* to apply a disputed *fiqh* rule, the *muḥtasib* is not acting as a jurist applying a result of his *ijtihād*, and thus in conflict with the majority rule, as expressed by al-Māwardī, but as an agent of the sultan, acting under the umbrella of his *siyāsa* power. Even in this discussion of the limitation of the *muḥtasib*'s jurisdiction to agreed-upon rules across the schools, al-Māwardī restricts his discussion to the Shāfiʿī school and does not provide a pan-school view of the position.

[31] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 299–300.

[32] Ibid., 300.

to do, and he may even display a lack of restraint and general harshness.[33] However, the *muḥtasib* has less power than the judge because the *muḥtasib* may only hear complaints about wrongs that are factually manifest and take place out in the open. The *muḥtasib* may use his own knowledge or rely on what he is told, but he may not hold a formal evidentiary hearing or ask anyone to take an oath to deny a claim. Only judges may hear evidence and administer oaths.[34] Finally, a decision of a *muḥtasib* is merely that; unlike the judge, the *muḥtasib* does not issue a legal judgment (*ḥukm*).[35]

Al-Māwardī then compared the authority of the *muḥtasib* to that of the sultan's tribunal (*maẓālim*). The *maẓālim* as an institution and the *muḥtasib* as an individual are faces of the law that should inspire fear and awe, in contrast to the judge who is supposed to be even-tempered and impartial. Further, what might lead to achieving public interest (*asbāb al-maṣāliḥ*) is an independent criterion that both the *muḥtasib* and the sultan in the *maẓālim* forum may take into consideration in their deliberation process. Al-Māwardī did not discuss the judge's use of public interest, presumably because he expected judges to use public interest as a factor in the process of *ijtihād* and not as an independent basis.[36] For the *muḥtasib* and the sultan in the *maẓālim* court, however, public interest is a free-standing basis for decision-making, one that can guide the entire process.[37]

Al-Māwardī addressed the substantive jurisdiction of the *muḥtasib*, divided into commanding right and forbidding wrong. Some rights belong to God, expressed and articulated in the Quran or the *ḥadīth*. One of God's rights is having the communal Friday prayer performed, and so if the *muḥtasib* sees that the male population of an area is large enough to require the communal prayer, he should enforce its performance. In contrast, human rights are determined by society's needs, such as having access to drinking water and having maintained fences in a community. The treasury should pay for these; if unable, then the people collectively should pay.[38] For al-Māwardī, the determination of a specific human right presumably comes from the ruler, who is best positioned to know what the society needs. (A good example of such a right will be seen in Chapter 8, with the *muḥtasib* undertaking a special collection from affected property owners to construct a pier to aid in the collection of water.)

Some rights are due to both God and society generally, and the *muḥtasib* should watch for and enforce these. Al-Māwardī gave the example of the requirement imposed upon slave owners to fulfill their obligations to their slaves and not to

[33] Ibid., 302.
[34] Ibid., 301–302.
[35] For an introduction to the concept of *ḥukm*, see Masud, Peters, and Powers, "Qāḍīs and Their Courts: An Historical Survey," in idem (eds.), *Dispensing Justice in Islam*, 29–30.
[36] On the distinction between *maṣlaḥa* as an independent precept and its more narrow usage as "a criterion to identify the *ratio legis* in analogy and as a universal precept by which the applicability of concrete rulings is judged," see Opwis, Maṣlaḥa *and the Purpose of the Law*, 59.
[37] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 302. Ibn Khaldūn's very brief description of the position of *muḥtasib* states that the official should punish according to what serves the general welfare (*al-maṣāliḥ al-ʿāmma*) in the city. Ibn Khaldūn, *Muqaddimat Ibn Khaldūn*, 237.
[38] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 305–306.

require their slaves to do work that they cannot bear. These are obligations that the owner has to the slave and to God as well. The same rule and system of obligations applies to the owners of animals; they are required to feed them and to not use them for work that is too demanding. The *muḥtasib* is expected to watch for and punish these types of violations.[39]

The section on the wrongs that the *muḥtasib* is expected to forbid is much longer than the discussion of the rights that the official should command. An example of a wrong against God is failure to pay the religious tax, *zakāt* (a topic that will be considered in Chapter 8). Al-Māwardī also discussed at some length the topic of wine (*khamr*) consumption as a wrongful act. If a Muslim openly displays *khamr*, he should be punished and the wine bottle emptied out. A non-Muslim should be punished for displaying it, but the scholars disagreed about whether the bottle should also be emptied out. A person who reveals his drunkenness in public should be punished, not for the *ḥadd* crime of drinking *khamr*, but as *taʿzīr* on account of the drunk's poor judgment and foolishness.[40] (A case involving wine production and possession will come up in Chapter 4.)

Al-Māwardī specified that the *muḥtasib*'s jurisdiction centers on the prevention of cheating in weights, measures, and scales; all cheating is a wrongful act, and the punishment for this should be the most visible and severe. If the *muḥtasib* doubts the accuracy of the scales and measurements used in the market, he may test and gauge them. Preferably, though, he would have a well-known stamp to mark the weights and measures he tests so that only those he approved will be used. If a merchant uses a forged measure, then he is in violation of the sultan's authority by not using the prescribed stamped measures and he is in violation of legal doctrine for cheating the customers; this statement is an explicit recognition that the *muḥtasib* is guided by both *fiqh* and *siyāsa* as sources of authority.[41] If the town is large enough to require measurers, weighers, and evaluators of coins, then the *muḥtasib* selects them and they must be honest and trustworthy.[42] (Chapter 6 includes a case of the *muḥtasib* dispatching weighers to the market.) The *muḥtasib* should watch over the behavior of merchants who specialize in transactions with women; only the merchant who exhibits trustworthiness should be permitted to transact with them. If there is evidence of bad behavior, the *muḥtasib* should punish the merchant. Al-Māwardī put the onus of good behavior on male merchants (but a

[39] Ibid., 307–308.

[40] Ibid., 312–313. This seems to be for two reasons: intoxication is not evidence of the crime according to Shāfiʿīs, and, in any case, the *muḥtasib* is not authorized to adjudicate *ḥadd* offenses.

[41] Al-Māwardī referred briefly to custom, a source of law that is not well studied and that can be considered the third source of authority alongside these two. See generally Libson, "On the Development of Custom as a Source of Law in Islamic Law"; Shaham (ed.), *Law, Custom, and Statute in the Muslim World*. Al-Māwardī stated that the *muḥtasib* should stop owners of animals from treating them improperly and rebuke them for doing so—he does not need a complaint to take action. If the owner argues that the work is suitable for the animal, the *muḥtasib* has jurisdiction over this issue, for determining whether a particular animal can bear a particular kind of work calls for the interpretation of custom. Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 319–320.

[42] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 316. Ideally, they should be compensated from the treasury to keep their payment separate from the process of weighing and measuring. Otherwise, there could be incentives to cheat in favor of the merchant or others who provide the compensation. Ibid.

case in Chapter 4 involves a *muḥtasib* shifting that burden to women in the marketplace).

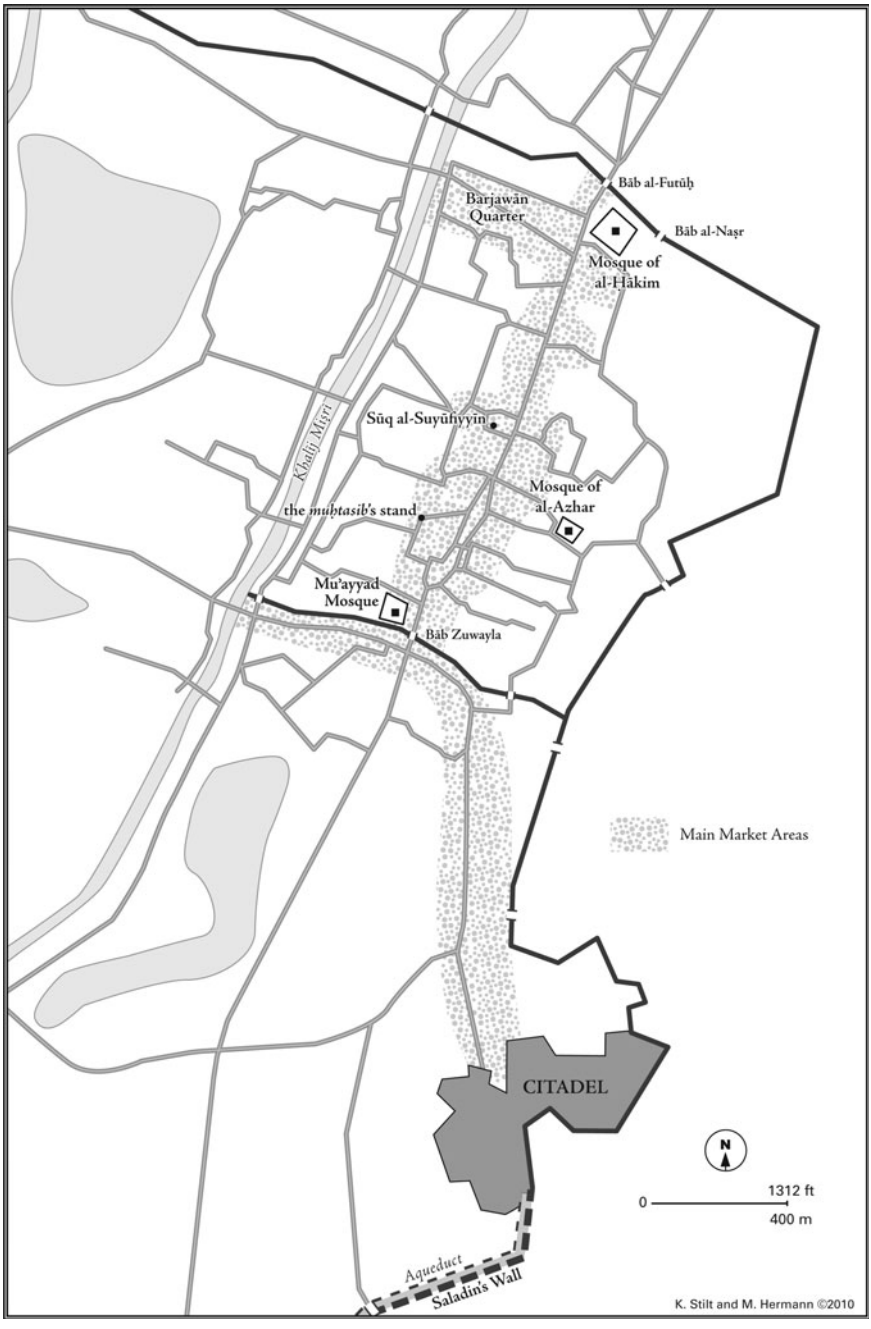
In the concluding part, al-Māwardī remarked that his chapter on the *muḥtasib* is long because there is no limit to the number of wrongs that can be committed. Significantly, he stated that what is mentioned in the chapter also contains guidance (*dalīl*) for dealing with the matters not included. He declared that *ḥisba* is one of the pillars of faith, but that over time, attention to *ḥisba* declined and jurists neglected to write about its rules and principles. Thus, the chapter in *al-Aḥkām al-sulṭāniyya* is an effort to review the rules and to emphasize the importance of carrying out *ḥisba* by the *muḥtasib* in particular.[43] Al-Māwardī's categories and concerns about the position in the eleventh century proved remarkably prescient; the same issues, and even examples, he discussed will be seen in the Mamluk-era case studies.

Walking the beat

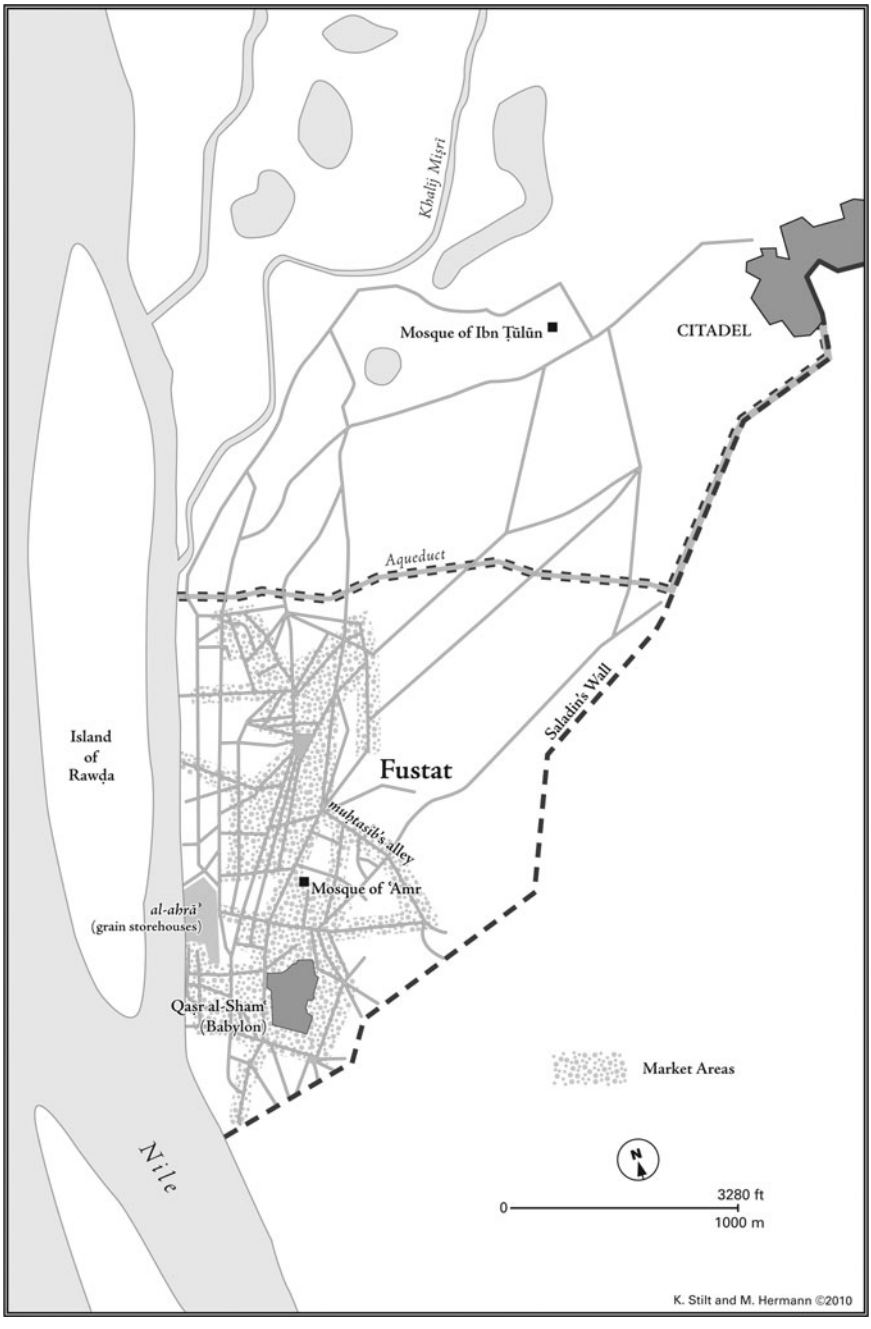
Egypt had three main *muḥtasib*s in the Mamluk period: one for Cairo, whose jurisdiction included lower (northern) Egypt except for Alexandria; one for Fustat, who also covered upper (southern) Egypt; and one for Alexandria.[44] Syrian cities had their own officials, and each head *muḥtasib* had assistants. The post in Cairo was considered more important and prestigious than that of both Alexandria and Fustat, commensurate with Cairo's status as the capital of Egypt,[45] and the trends found in the biographies of the officials suggest that resources were proportioned to give Cairo preferred treatment over Fustat. This may have been for practical reasons: Fustat's markets were smaller and also further from the sultan's seat of power. Cairo's residents might, and on occasion did, protest outside of the Citadel, but angry Fustat residents would have had to make a much longer trip to do so. When recognition as a jurist was a significant criterion for the position, as seems to have been the case at the beginning of the period, then Cairo received the better qualified. Later, when administrative experience was the qualification of choice, the same pattern can be seen. Residential patterns may have influenced the office-holding patterns, too, since the distance between Cairo and Fustat may have made it difficult for a resident of Cairo to serve in Fustat or vice versa.[46]

The structure of the Mamluk-era marketplace is vital information in understanding how the *muḥtasib* regulated a wide range of professions and industries and public behavior more generally. Map 2.1 shows Cairo's central market areas,

[43] Ibid., 322.
[44] Al-Qalqashandī, *Ṣubḥ al-aʿshā*, 4:37.
[45] Ibid., 11:209; ʿAbd ar-Rāziq, "Les *muḥtasib*s de Fosṭāṭ," 127.
[46] For example, S. D. Goitein reported that Maimonides (d. 1204) lived in Fustat but commuted to Cairo daily, where he served as physician in the Ayyubid court, and he referred to the commute as a "nuisance." Goitein, *A Mediterranean Society*, 4:12.



Map 2.1. Cairo's central market areas and the *muḥtasib*'s stand (*dikkat al-muḥtasib*) in the Mamluk period.



Map 2.2. Fustat's central market areas and the *muḥtasib*'s alley in the Mamluk period.

including the main thoroughfare known as the "Qaṣaba," between Bāb al-Futūḥ in the north and Bāb Zuwayla in the south. The Mamluk-era historian al-Maqrīzī identified along the Qaṣaba 48 markets (of the 87 that he located in Cairo overall) and 44 caravansaries (out of 58 in Cairo). Residential areas were situated around, in some cases interwoven with, the commercial areas, and apartment buildings were often built on top of commercial establishments.[47] The *muḥtasib*'s stand (*dikka*) was in the midst of the markets.[48] He was supposed to keep his instruments of punishment there, such as the whip, and it may also have been a storage place for the weights and measures with which he tested those of the merchants. The *dikka* of the *muḥtasib* in Cairo was located to the northwest of Bāb Zuwayla and is marked on Map 2.1, slightly off to the west towards the southern end of the Qaṣaba.

For Fustat, the geographical details are not as clear, since as the second city it received less attention from historians. Although the stretch of land between Fustat and Cairo was far less dense and populated than the cities themselves, several main paths connected the two (see Map 2.2). The existence and location of the *muḥtasib*'s stand in Fustat is not certain. Based on the topography of Ibn Duqmāq (d. 1406), Sylvie Denoix identified an alley (*zuqāq*) called the *muḥtasib*'s alley, where, presumably, the official's home base was located, but there is no evidence of the location of a *dikka* (stand) or *dār* (building) of the *muḥtasib*.[49] If this alley did indeed contain the Fustat *muḥtasib*'s stand, it would not have been as central to the markets of the city and the port and grain storehouses (*ahrā'*, which are identified) as the Cairo *muḥtasib*'s stand was to Cairo's central market. However, the Fustat *muḥtasib* also had to be concerned about proximity to his source of power, the sultan, and so the placement may have aided in communication with and access to the Citadel.[50] With this brief sketch of the physical parameters in which the *muḥtasib*s acted, the next section turns to the process by which *muḥtasib*s were appointed to the position.

Letters of appointment

The Mamluk sultan appointed the *muḥtasib*s of Cairo and Fustat, who served at his pleasure and were expected to follow his periodic instructions. An extensive appointment document (*waṣīya*) from the Mamluk period was recorded by al-ʿUmarī (d. 1349) in his *al-Taʿrīf bi-l-muṣṭalaḥ al-sharīf*, and al-Qalqashandī (d. 1418) after him included the same decree (along with several others) in his

[47] For a discussion of housing in Mamluk Cairo, see Sabra, *Poverty and Charity in Medieval Islam*, 102–109. For contemporary residential patterns in these areas today, see Daftary, Fernea, and Nanji (eds.), *Living in Historic Cairo*.

[48] Al-Maqrīzī, *al-Khiṭaṭ*, 2:516.

[49] Ibn Duqmāq described where this alley was, but did not explain what activities took place there. Ibn Duqmāq, *al-Intiṣār li-wāsiṭat ʿiqd al-amṣār*, 4:20. See generally Denoix, *Décrire le Caire*. As will be discussed in Chapter 6, Ibn al-Rifʿa indicated that there was a *dār al-ḥisba* in Fustat (which could be the same as a *dikka*) although he did not specify where.

[50] Following this logic, prior to the existence of Cairo, the location could have been elsewhere in Fustat if the office existed in Fustat at that time.

massive book on secretaryship, *Ṣubḥ al-aʿshā fī ṣināʿat al-inshā'*.[51] Al-Qalqashandī was a secretary for the Mamluk sultans and learned in Islamic law, and in particular the Shāfiʿī school. His book on secretaryship contains both its theoretical bases and the specific skills needed by a secretary dealing with official correspondence. Such a secretary should know the appointment decrees used for officials such as the judge and *muḥtasib*.[52] The actual process of appointing the *muḥtasib* might have involved the reading aloud of such an appointment decree. Since, however, chroniclers reported dismissals and appointments succinctly, neither referring to nor replicating such a document, perhaps the official simply received a written appointment decree.[53]

The appointment document that was recorded by al-ʿUmarī and copied by al-Qalqashandī is as follows:

[1] [The appointed person] has been put in charge of this position and is entrusted by his appointment with supervision of the welfare (*maṣāliḥ*) of the Muslims. His jurisdiction includes the trifling and the important; the plentiful and the scarce; that which is measurable and that which is not; that which is commanded as right and forbidden as wrong; that which is bought and sold; that which brings one closer to paradise by doing it properly and distances one from hell, even if the distance between [the correct act] and hell is only [a small amount or a short measure of length];[54] all that is done in the course of earning a living by day and night; and that for which the amount can be known only by the utterances of the tongue of the balances or the speech of the mouth of the dry measure.[55]

[51] Al-ʿUmarī, *al-Taʿrīf*, 178–180; al-Qalqashandī, *Ṣubḥ al-aʿshā*, 11:214–215. Unfortunately, neither author provided specific dates for when the document was in use, but evidence points convincingly to the Mamluk period: it is the only appointment decree for the *muḥtasib* that al-ʿUmarī included, and later al-Qalqashandī copied and presented it towards the end of what appears to be a chronological listing. Al-Maqrīzī in *al-Khiṭaṭ*, 2:516–517, however, quoted from an earlier appointment document as reported in Ibn al-Ṭuwayr (d. 1220), *Nuzhat al-muqlatayn fī akhbār al-dawlatayn,* 116–117. Ibn al-Ṭuwayr was a late Fatimid-era author, and it is curious that al-Maqrīzī did not include the version that his contemporaries al-ʿUmarī and al-Qalqashandī did. Ibn al-Ṭuwayr's appointment document, for example, states that the *muḥtasib*s of Cairo and Fustat should hold sessions in the mosques of their respective cities, but the Mamluk-era chronicles indicate no evidence of such a practice.

[52] Al-Qalqashandī also discussed the office of *muḥtasib* in general, considering it one of the positions of the pen, as distinguished from positions of the sword. He further divided positions of the pen into those dealing with affairs of faith (*dīn*) and those dealing with the administration, or *dīwān*, i.e., scribal ones. The positions dealing with *dīn* are eight, including the judge, mufti, *muḥtasib*, teacher, and preacher. Al-Qalqashandī, *Ṣubḥ al-aʿshā*, 9:255–256.

[53] Most typically, the phrase *akhlaʿa ʿalayhi al-ḥisba* (with the general meaning of "the robe of honor [*khilʿa*] of *ḥisba* was bestowed upon him") was used by chroniclers to indicate appointments, sometimes with the particle *bi-* before the word *al-ḥisba*. The passive verb *khuliʿa* was also used. The dismissal of the previous *muḥtasib* was often mentioned in the same sentence because the appointment was usually to replace someone else (*ʿiwaḍan ʿan*) since the position was almost never left vacant. Appointments were also indicated by a phrase such as *istaqarra fī ḥisbat al-Qāhira* ("he was established in the position of *ḥisba* of Cairo"). For a discussion of the concept of the robe of honor and physical descriptions, see Mayer, *Mamluk Costume*, 56–64.

[54] This indicates that cheating a customer even by a little is a sin that could condemn the merchant to hell.

[55] The paragraph concludes with two puns: the part of a balance scale upon which the horizontal bar holding the two weighing pans rests is called the "tongue," while a vessel for measuring dry products, like flour, is usually cup-shaped, and the open, top part is called the "mouth," as in "the mouth of the jar."

[2] Standard criteria should be kept with him for every profession and standard measures [should also be kept with him], so that whenever measures [used by merchants] are compared to these, it will be known who is cheating and who is honest. He should examine most of the means of earning a living and should warn against fraud. Actually, most disease comes from food or drink.

[3] He should acquaint himself with prices and gather information about developments in each market without giving advance notice to its merchants. To carry out these inspections, the *muḥtasib* should establish a trustworthy deputy, in whom he can have confidence if [the *muḥtasib*] is absent. [The *muḥtasib*] should order [the deputy] to inform him of that which was difficult and to consult with him to the extent he is able. This is because the *muḥtasib* is more qualified—his opinion is better.

[4] As for the mint and the coins that come from it, there may be some impure ones among them that are not initially obvious. The *muḥtasib* should be courageous in monitoring the products of the mint. He should test some of them against a touchstone that he approves of such that adulterated coins cannot get past it. He must establish inspectors for that which the heating process has shown to have debased gold or silver mixed in, and that which fire has consumed all or some of its soldering. He should appoint an inspector to watch over the quality[56] of gold like the chameleon watches the sun.

[5] He should impose sureties on druggists as to the sale of unusual and powerful substances, except from those who are well known and not under suspicion and when there is a prescription for a specific remedy or treatment. As for street sellers and performers, astrologers, other professions related to the Sāsān,[57] and anyone who takes people's money with ruses and dupes them with sweet talking, and each bad person of this type—actually he is a devil, not a person—forbid them all completely, break them like glass so they cannot be repaired, and impose upon them an exemplary punishment (*nakāl*). Otherwise, there is no use in punishing them at the level of chastisement (*ta'dīb*) and a slap. Cut off these evil elements at the root and stop these worn-out tricks that seduce weak people.

[6] If you find someone who has cheated a Muslim, taken a *dirham* falsely, told a buyer an inflated price, or departed from the prevailing commercial practices, parade him ignominiously throughout the city, and lash his back with that instrument [the whip] until a strong person weakens from it. As for teachers, female tricksters,[58] and others of the kind who are to be feared on account of being like a wolf wreaking havoc in a herd of she-gazelles, and whoever makes threats against [weak people] and dares to engage in all of this, shoot them with your arrow, frighten their audacity with your courage, and only permit those [to hold these positions] whose trustworthiness you have tested and whose reliability you have approved.

[7] As for assistants, only accept the one who can act effectively. The heavenly reward of the assistant is credited to you if you have appointed the right one. Fearing God is the best of paths. There will not be for you any [meaning or benefit] to all that we have said—rather, most of it—unless you follow the Mālikī school in doing it.

[56] Lit. "shininess."

[57] The origins of the name "Banū Sāsān" to describe the followers of the legendary Shaykh Sāsān are speculative, but "Banū Sāsān" or just "Sāsān" "became a blanket designation for rogues and beggars of all kinds," including those who trick and swindle people. Bosworth, *The Mediaeval Islamic Underworld*, 1:23–24.

[58] For a discussion of these two terms, see Lange, "*Ḥisba* and the Problem of Overlapping Jurisdictions," 100.

This document instructs the *muḥtasib* from its very beginning that the overall goal is to supervise the interests or welfare (*maṣāliḥ*, sing. *maṣlaḥa*) of the Muslims. As seen above in the discussion of al-Māwardī, welfare as an independent goal is associated with the *muḥtasib* and the sultan. The Quranic language associated with the position—commanding right and forbidding wrong—appears in the first paragraph but is mixed in with other items that are expressed mainly in market terms, and, indeed, the document is heavy on market-related behavior.

Paragraph two instructs the official to be prepared with standard measures so that he can check the instruments of measurement used by the merchants. He is also warned about merchants of food and beverages and the possibility of fraud and even disease associated with consumables (as seen in a case in Chapter 6). Paragraph three deals with prices and with the *muḥtasib*'s assistants. The two points are related because in order to gather information about prices, the city's chief *muḥtasib* would need assistance to investigate all of the markets frequently enough to stay apprised of developments. Paragraph four instructs the *muḥtasib* to watch for fraudulence in coins, specifically gold and silver ones. Coinage is a manifestation of sultanic power, and nearly every sultan minted them. As a practical matter, copper was the coin of daily transactions and involved in most of the reported forgery cases (as seen in Chapter 8).

Paragraph five addresses people who defraud consumers with ruses and tricks, inflated prices, or other ways of cheating in market transactions. It introduces the concept of punishment, explaining that these dupers and cheaters are like the devil and require serious punishment—mere chastisement and a slap are not sufficient. This statement refers implicitly to the idea that the level of punishment carried out through *taʿzīr* (which would include chastisement) should be suitable to the identity of the perpetrator. One of the fundamental concepts of *taʿzīr*, as seen here, is that the punishment should fit the person and the wrongdoing.

Paragraph six instructs that those who cheat in market transactions are to be ignominiously paraded throughout the city (*tashhīr*) and subject to physical beating.[59] Making wrongful acts known is intended not only to humiliate the perpetrators but also to serve as a warning to others who might try the same. The latter part of paragraph six seems to refer to male and female instructors of children and warns that they are to be monitored carefully because the children in their charge are as delicate as gazelles, and the instructors have the potential to be as dangerous as wolves. The reference to shooting with an arrow must be metaphorical; no evidence suggests that this was used by the official.[60]

Paragraph seven begins by explaining that the *muḥtasib* will be held responsible for the actions of an assistant he has appointed, creating a kind of agency relationship. The end of paragraph seven refers to the desirability of the *muḥtasib* following the Mālikī school. At first glance, this might suggest that this document was prepared for a Mālikī *muḥtasib*, but all the historical evidence from the

[59] For an introduction to the concept of *tashhīr*, see Lange, "Legal and Cultural Aspects of Ignominious Parading (*tashhīr*) in Islam."

[60] The typical instrument of punishment associated with the Mamluk *muḥtasib* was the whip.

Mamluk period shows that the position was not school-specific; *muḥtasib*s were not appointed to carry out the commands of different schools of law. Further, according to al-Māwardī, the jurisdiction of the *muḥtasib* should be limited to agreed-upon rights and wrongs, a view generally held, such that an explicit choice to the contrary, creating *muḥtasib*s for each school, would be remarkable. The language referring to the Mālikī school is informal and comes at the end almost as an afterthought, albeit a rhyming one in Arabic. By contrast, the judicial appointment documents recorded by al-ʿUmarī are clearly school-specific: judges in the Mamluk period were appointed for a particular court affiliated with a particular school.

Since the document was for use by the sultan in appointing the *muḥtasib*, it is possible that the sultan was suggesting to the official that the rules of the Mālikī school will be more beneficial to him than others in the exercise of his position, at least for certain issues. Why would Mamluk sultans, who typically personally followed the Shāfiʿī school, make this suggestion? According to the concept of *siyāsa*, the ruler may issue orders as needed for public good so long as they supplement rather than contradict doctrine. A view approved by one school is per se a doctrinally permissible rule. Thus, the ruler's *siyāsa* powers would allow the adoption of a Mālikī position.[61] But what was the sultan's interest in doing so? While it cannot be concluded that the Mālikī school generally gave more power to the ruler or held views that a ruler would find more useful or suitable, there are two substantive areas discussed in the case studies of this book in which this is the case: price-setting and punishments.

Many cases involving rising prices and the sultan's and *muḥtasib*'s efforts to impose lower prices on the merchants will be examined in Chapter 7. Mālikī doctrine in general gave the ruler more power to act in this area than the other Sunni schools, and a key *muḥtasib* manual from the Mamluk period, authored by Ibn al-Ukhuwwa and discussed in the following section, specifically identifies the Mālikī school as offering greater flexibility of action to the ruler in matters of price-setting. Thus, the reference to the Mālikī school in the appointment document may have been intended to invoke price-setting rules. In terms of punishment, the relevant issue here is the limitation on punishment under the heading of *taʿzīr*. As has been seen, many jurists stipulated that lashings given as *taʿzīr* must not exceed the lowest *ḥadd* penalty, although the Mālikī school did not set such a limit. The phrase in the appointment document referring to the benefit of Mālikī views, then, may have been directed at punishment rules.

More evidence for this interpretation is found in another *muḥtasib* appointment document that appears to be applicable to Damascus in the Mamluk period, which al-Qalqashandī (although not al-ʿUmarī, even though al-Qalqashandī referred to him) recorded. In discussing punishment, the decree states: "Follow the teachings of Mālik in his views on punishment, sometimes in the form of corporal penalties

[61] This is a very different scenario from the *muḥtasib*, acting on his own initiative, choosing to apply rules that were specific to the Mālikī school, a scenario that al-Māwardī and most jurists would not approve of.

and sometimes in the form of pecuniary fines."[62] Given these clues, the reference to the Mālikī school in the full appointment document analyzed may be a subtle effort to suggest these advantages in certain areas while still maintaining the position that the *muḥtasib* is appointed to enforce agreed-upon rules and not the rules of a particular school.

Finally, we must consider what this appointment document does not mention: matters of worship (*ʿibādāt*) such as praying and fasting are not present, nor are *ḥadd* crimes, even for the purpose of letting the *muḥtasib* know what behavior to watch out for and when he would exceed his jurisdiction by getting involved in them. The document is best understood as showing the sultan's priorities for the regulation of society, but it does not express itself as the exclusive instruction to the *muḥtasib*. Indeed, the first paragraph indirectly incorporates any topic considered commanded as right or forbidden as wrong; this use of Quranic language serves to bring in a vast body of doctrine. While the decree focuses the *muḥtasib*'s attention on specific topics, it also tells him that he is responsible for monitoring a vast array of public behavior.

Manuals of instruction

The fundamental source of guidance for the *muḥtasib* was the injunction to command right and forbid wrong, which the jurists commented and elaborated upon. But the juridical works of *fiqh*, which include complex discussions of proof texts and disagreements on views within or across schools, would not allow the average *muḥtasib* to easily use them to familiarize himself with agreed-upon doctrinal rules. Aside from the appointment document and occasional orders from the sultan, how did a *muḥtasib*, who might have had little in the way of legal education, know how to carry out the demands of his position? Manuals written for the express purpose of guiding *muḥtasib*s in their work provided the official with detailed and practical legal guidance.[63] These may have been written by jurists, but often the authors were fairly unknown men who must have had enough education to provide short summaries of *fiqh* rules and enough experience in the market to describe the daily challenges the appointed official faces. The chronicle reports do not explicitly refer to a *muḥtasib* consulting such a manual, but there are many possible scenarios that still allow for the practical relevance of the manuals, including that such consultation might have taken place privately.

These manuals typically list the qualifications for the person serving as *muḥtasib*, describe the *muḥtasib*'s areas of duties, caution against specific types of fraud and how to detect them, and suggest means of punishment. For example, according to

[62] Al-Qalqashandī, *Ṣubḥ al-aʿshā*, 12:64. Only the Mālikīs agreed that fines were an acceptable *taʿzīr* punishment. Peters, *Crime and Punishment in Islamic Law*, 33.

[63] *Muḥtasib* manuals are not exclusive to the Mamluk period. The earliest extant manual is that of Yaḥyā b. ʿUmar, discussed above. They form what should be considered a distinct genre of "rules for the *muḥtasib*" (*adab al-muḥtasib*).

doctrinal rules, a transaction should be based on accurate information in order to ensure that it does not subject the buyer or seller to excessive risk (*gharar*), such as in the object of the sale itself or the sale's terms and conditions. But how would a *muḥtasib* know how to enforce this general rule in the face of a creative merchant trying to cheat his customer in devious ways, perhaps by mixing oak bark into a bag of musk so that the customer cannot even see that what she is buying is not pure? The manual tells the *muḥtasib* the typical tricks engaged in by each type of merchant and how to detect them, and provides simplified versions of rules of doctrine.

Modern scholars sometimes treat these manuals as quasi-chronicles, assuming that they depict historical events. Without corroborating evidence from chronicles or other descriptive sources, relying on the manuals for evidence of social practice in a particular time and place is problematic.[64] The manuals as a genre contain clauses that appear to have been copied from one manual to the next, and few authors seem to have written their manuals without an awareness of and consultation with previous ones. Each manual contains elements of the prescriptive and descriptive, and so each paragraph or rule in a manual needs to be considered individually to determine its significance—did the author encounter the problem when serving as *muḥtasib*? Does the rule respond to a particular incident or pervasive problem? Or did the author include the rule in the manual, perhaps copying it from an earlier manual or a book of *fiqh*, without anyone ever having encountered the issue or having heard that it was a problem in his place and time? Viewing the manuals as part of a larger discussion about the role of the *muḥtasib* in the Mamluk legal landscape allows for more meaningful conclusions than viewing them narrowly as evidence of social practice.

Three manuals are relevant to the discussion of the Mamluk period. *Kitāb Nihāyat al-rutba fī ṭalab al-ḥisba* was written in the Ayyubid period by ʿAbd al-Raḥmān b. Naṣr al-Shayzarī (d. 1193); *Maʿālim al-qurba fī aḥkām al-ḥisba* is attributed to Ḍiyāʾ al-Dīn Muḥammad b. Muḥammad b. Aḥmad al-Qurashī al-Shāfiʿī, who was known as Ibn al-Ukhuwwa (d. 1329); and *Nihāyat al-rutba fī ṭalab al-ḥisba* is attributed to Muḥammad b. Aḥmad b. Bassām (d. before 1440). Each of these three is introduced briefly here, and specific rules from the manuals are brought into the discussions in the following chapters as they are relevant to the particular case at hand.

Al-Shayzarī's manual

Al-Shayzarī's *Nihāyat al-rutba fī ṭalab al-ḥisba* has been considered a prototype because extracts from it appear verbatim in the manuals by Ibn al-Ukhuwwa and Ibn Bassām.[65] It also shares a title with Ibn Bassām's manual. Scholars have

[64] *Muḥtasib* manuals—namely, the three discussed in this section—formed the basis for the discussion on the *muḥtasib* in Labib, *Handelsgeschichte Ägyptens im Spätmittelalter (1171–1517)*, 179–183.

[65] Al-Sayyid al-Bāz al-ʿArīnī published a critical edition of the text in Egypt in 1946. He relied mainly on (1) a manuscript from the Egyptian National Library (ṣināʿāt collection 20, film 18839) that was copied in 711/[1311] by Abū Bakr ʿAlī al-Bahnasī, an Egyptian from the upper Egyptian town of

surmised that Ibn al-Ukhuwwa and Ibn Bassām had access to a copy of al-Shayzarī's manual or some earlier (and now lost) manual that al-Shayzarī himself used as a model. The number of copies of al-Shayzarī's manual that have survived in Egypt is another indication that Mamluk-era Egyptian authors had access to the book.[66]

Al-Shayzarī's biographical details are not known in any detail. Another of his texts, *al-Nahj al-maslūk fi siyāsat al-mulūk*, contains a dedication to Ṣalāḥ al-Dīn that suggests that the two were contemporaries, and his death date is generally given as 589/1193, the same year in which Ṣalāḥ al-Dīn died.[67] He is believed to have been a Shāfiʿī, and although no school is mentioned in the manual itself, on at least one occasion al-Shayzarī presented the particular Shāfiʿī rule without identifying it as such.[68] Al-Shayzarī made many references to Syrian towns in the manual, suggesting that he was familiar with the region, but it is not entirely clear that he was of Syrian origin.

In the introduction to the manual, al-Shayzarī wrote that he was "asked by someone who was appointed to the position of *ḥisba*, and who has been entrusted with the public interest and with investigation of the matters of the market and merchants, to collect for him a complete compendium regarding the proper conduct of the office of *ḥisba*, so that it will be a pillar of his governance and strength for his leadership."[69] No proof establishes that al-Shayzarī himself served as *muḥtasib*. A detailed investigation of the relationship between context and

Bahnasā. This is the most complete of the extant manuscripts and the oldest, with the exception of an incomplete manuscript that the editor found in the Azhar collection mentioned below. He also relied upon: (2) an undated and incomplete manuscript from the British Museum (Or. 9221), on the first page of which is written the name Muḥammad b. ʿAbd Allāh al-Ṣafadī al-Muḥtasib. Al-ʿArīnī could not identify this individual, but since he appears to have been a *muḥtasib*, al-ʿArīnī concluded that this shows that *muḥtasib*s used this book to understand the rules of their work. Ibid., pp. mīm-nūn (editor's introduction); (3) a manuscript from Leipzig Library copied in 1222/[1807]; (4) an undated manuscript from a collection in Vienna; (5) the incomplete manuscript from the Azhar collection copied in 675/[1276–7] (no. 7276, Abāẓa collection); and (6) a manuscript from the Egyptian National Library copied in 1079/[1668] (ṣināʿāt collection 72, film 18784), which is the same as the Leipzig manuscript. I identified in the Egyptian National Library five additional microfilmed copies of al-Shayzarī's manual: (1) a manuscript copied in 1341/[1922–3] by Maḥmūd Fahmī al-Marsifī (ṣināʿāt collection 62, film 47488); (2) the same manuscript that was copied by al-Bahnasī under a different catalog entry (ṣināʿāt collection 73, film 47489); (3) an undated manuscript (ijtimāʿ tīmūr collection 26, film 17635); (4) a manuscript copied in 740/[1339–40] (film 823, no other collection record); and (5) an undated manuscript attributed incorrectly to al-Sanāmī (see bibliography) (maʿārif ḥalīm collection 5, no film number). In addition, a catalog entry of ṣināʿāt collection 21 indicates that it is the manual of al-Shayzarī but it appears to have no corresponding film nor was the manuscript available to view. R. P. Buckley translated al-ʿArīnī's edition into English in 1999 in *The Book of the Islamic Market Inspector*. All citations herein to al-Shayzarī's manual are to al-ʿArīnī's edition.

[66] Al-Shayzarī, *Nihāyat al-rutba*, p. yā' (editor's introduction).

[67] Ibid., p. kāf (editor's introduction); Buckley, *The Book of the Islamic Market Inspector*, 12; Brockelmann, *GAL*, Supp., 1:832–833.

[68] This creates a tension, not addressed by any manual author, between the pan-school aspects of the position and the presentation of school-specific rules in some cases in the manuals.

[69] Al-Shayzarī, *Nihāyat al-rutba*, 3. Al-ʿArīnī thought that this remark suggested that al-Shayzarī wrote it at the indirect request of Ṣalāḥ al-Dīn, in order to assist the Ayyubid administration in supervising craftspeople. Ibid., p. kāf (editor's introduction).

al-Shayzarī's text would require delving into Ayyubid history. For purposes here, the manual's significance is due to its similarities to the other two manuals and its apparent circulation in Egypt.

Al-Shayzarī's manual is carefully organized and the forty chapters are arranged according to subject, beginning with the qualifications of and instructions for the *muḥtasib* in Chapter 1, followed by the general topics of supervision of markets and roads (Chapter 2), coinage (Chapter 3), and weights and measures (Chapter 4). Chapters 5 to 16 deal with food products, beginning with the crucial professions related to bread production: grain and flour merchants, bakers, and oven keepers. Chapters 17–19 concern products related to medicine—apothecaries, sellers of essences, and makers of medicinal syrup—and Chapter 20 is about clarified butter. Chapter 21 begins the section related to non-food crafts and professions—cloth merchants, brokers and "criers," weavers, tailors, cotton carders, veterinarians, and the like. Christians and Jews (*ahl al-dhimma*) are treated in the penultimate chapter, and general and specific matters pertaining to the exercise of *ḥisba* not already covered in the text are the subject of the final chapter.

Al-Shayzarī's introductory statement of the qualifications for and basic jurisdiction of the position is the same as in the other two manuals:

> Since *ḥisba* is commanding right and forbidding wrong, and promoting social order (*iṣlāḥ bayna al-nās*), it is necessary that the *muḥtasib* be a jurist (*faqīh*), knowledgeable in the legal rulings of the Sharia (*aḥkām al-sharīʿa*), in order to know what to command and what to forbid. For good is what the law has made good, and bad is what the law has made bad. The only way to know right and wrong is through the Quran and *sunna* of the Prophet. An ignorant person may with his own reasoning come to deem as good something that the law made wrong, and thereby do what is wrong while not knowing it.[70]

With this statement, which is repeated in the other two manuals, al-Shayzarī summarized his vision of the office of *muḥtasib*. The position includes three main tasks: commanding right, forbidding wrong, and promoting social order. The phrase "promoting social order" (*iṣlāḥ bayna al-nās*) is also Quranic, and conveys a sense of social welfare; the etymological root of *iṣlāḥ* is the same as that of the word *maṣlaḥa*. Al-Shayzarī clarified, however, that the source for right, wrong, and social order is the Quran, *sunna*, and by implication the rules of *fiqh* derived therefrom.

While the *muḥtasib* should be learned in *fiqh*, al-Shayzarī qualified that with the statement that the point of the learning is to know what to command as right and forbid as wrong. The person does not need to know the whole range of *fiqh* possibilities, nor be able to undertake *ijtihād*, but should at least know what behavior falls into the categories of forbidden and required. To facilitate this, al-Shayzarī's manual provides clear rules of *fiqh* that are presented as agreed upon by the jurists (even though he actually gave the Shāfiʿī rule on some topics), without going into any details of disagreements or disputes among the jurists. What is not

[70] Ibid., 6.

included in al-Shayzarī's description of the *muḥtasib*'s duties is any mention of the ruler's instructions, whether in the appointment document or on a daily basis.

Ibn al-Ukhuwwa's manual

Ibn al-Ukhuwwa's *Maʿālim al-qurba fī aḥkām al-ḥisba* was edited and partially translated in 1938 by Reuben Levy, and since then it has been widely cited by scholars.[71] Despite the popularity of the text, little is known about the author except that he died on the second day of the month of Rajab 729/May 1329, he was a Shāfiʿī, and he appears to have been an Egyptian.[72] Ibn al-Ukhuwwa's text is composed of seventy chapters; the chapters that add to the information in al-Shayzarī's manual are chapters fifty-four through sixty-nine on craftspeople.[73] A substantial number of sections or parts of sections in this manual are identical to those in al-Shayzarī, and the ordering of the chapters is the same to some extent. Despite these similarities to al-Shayzarī's manual, Ibn al-Ukhuwwa's text is different in fundamental ways. Al-Shayzarī tended to give specific, pragmatic, and direct instructions whereas Ibn al-Ukhuwwa offered his *muḥtasib*s long discussions of doctrinal rules. For example, he presented the *muḥtasib*'s qualifications and jurisdiction succinctly as in al-Shayzarī, but then added a long elaboration, including a discussion that comes straight from al-Māwardī, on whether a *mujtahid muḥtasib* may impose his own views on the people he regulates.[74] While organized under topic headings that look like a *muḥtasib* manual, Ibn al-Ukhuwwa's manual reads like a *fiqh* text at times. He offered differing opinions in some cases, giving and naming not only the Shāfiʿī view but also that of the Ḥanafīs and Mālikīs (though

[71] Levy relied upon four manuscripts in the preparation of his edited text: (1) an undated manuscript (which Levy thought was from the eighth/fourteenth century) at the Bodleian Library (Or. 315); (2) a manuscript copied in 771/[1370] at the British Museum (Or. 6976), which lacks many diacritical marks but which Levy concluded was in general more accurate than (1); (3) a manuscript Levy dated to the ninth/fifteenth century with the title *Kitāb al-Qurba fī maʿālim al-ḥisba* at the Egyptian National Library (ṣināʿāt collection 171), of which two microfilmed copies appear to have been made (films 19249 and 18186); and (4) a manuscript copied in 1306/[1889] in Damascus from a copy dated 742/[1341], which Levy places at the Arab Museum in Cairo (no. 3271). His reference to the Arab Museum is unclear; any manuscripts housed under this name might have been later transferred to the National Library, although there is no such record number there. In addition, a microfilm in the Egyptian National Library (ṣināʿāt collection 172, film 47492) exists, which may be the same as Levy's fourth manuscript. After Levy, another edition of this manual was produced by Muḥammad Maḥmūd Shaʿbān and Ṣiddīq Aḥmad ʿĪsā al-Muṭīʿī and published in Cairo in 1976, but with very few changes from Levy's edition. Shaʿbān and al-Muṭīʿī relied mainly on (1) a microfilm copy (Cairo University, no. 24052) of the manuscript at the Bodleian Library (Or. 315) and (2) Levy's fourth manuscript, found at the Arab Museum in Cairo (no. 3271). Citations herein are to Levy's edition.

[72] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, p. xvii (editor's introduction).

[73] The additional trades in Ibn al-Ukhuwwa's manual are: shipmen; sellers of earthenware and pottery; porcelain makers; needle makers; spindle makers; henna sellers; comb makers; presses for sesame and olive oil; sieve makers; tanners and leather bottle makers; felt makers; furriers; reed mat makers; straw sellers; sellers of timber and saw dust; and, finally, carpenters, sawyers, masons, and lime burners. Each of these chapters is fairly short and specific and is aimed at consumer health and safety and ensuring that customers receive their full measure of goods purchased.

[74] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 7–8.

never the Ḥanbalī view). Ibn al-Ukhuwwa's manual also cites proof texts with much higher frequency than al-Shayzarī's.

For example, he posited a scenario in which a person gives a tailor cloth and the tailor makes a coat, but when the customer comes to pick it up, he says that he had asked for a shirt. There are different opinions on how to resolve this dilemma, assigning responsibility to the customer or tailor, and Ibn al-Ukhuwwa gave not only the Ḥanafī and Mālikī views, but also several Shāfiʿī opinions.[75] Al-Shāfiʿī's position that pig's hair should not be used in the making of shoes due to its impurity was preferred by Ibn al-Ukhuwwa, but he included the differing opinions by Mālik and Abū Ḥanīfa in his chapter on the shoemaker.[76] Like al-Shayzarī, Ibn al-Ukhuwwa gave the *muḥtasib* doctrinal rules to follow, but he did so in a much longer and more complex way. For Ibn al-Ukhuwwa's text to be used as a practical manual, the *muḥtasib* would have to make his own decision as to which rule he would follow, or at least determine how to apply Ibn al-Ukhuwwa's preferred legal rule to factual scenarios. The manual's presentation of a diversity of views also raises the question of whether Ibn al-Ukhuwwa intended a *muḥtasib* to pick one view and impose it on those he regulated, in contrast to the general view that the *muḥtasib* is supposed to limit himself to agreed-upon rights and wrongs, or, alternatively, whether Ibn al-Ukhuwwa merely wanted the *muḥtasib* to be aware of the range of opinions, while confining himself to agreed-upon ones.

Ibn Bassām's manual

Nihāyat al-rutba fī ṭalab al-ḥisba is attributed to Muḥammad b. Aḥmad b. Bassām, about whom there is very little information. The earliest surviving text is a copy dated 844/1440, so Ibn Bassām must have written the book at or before that time. Modern scholars have placed Ibn Bassām's death date after that of Ibn al-Ukhuwwa, although this has been recently challenged.[77] The manual was first published in Baghdad in 1968 by Ḥusām al-Dīn al-Sāmarrāʾī, who concluded that Ibn Bassām was an Egyptian because he discussed Egyptian weights and measures

[75] Ibid., 138. [76] Ibid., 149.

[77] Lutfallah Gari has attempted to date Ibn Bassām a century and a half before al-Shayzarī on the basis of a book on Tinnīs (a town south of Port Said), which he attributes to the same Ibn Bassām, that he says must have been written before circa 1050 based on internal evidence. Gari, "About al-Shayzarī and Ibn Bassām," 4. Gari's dating may have merit and needs to be considered further, but his very short article draws conclusions without adequate evidence that the Muḥammad b. Aḥmad b. Bassām al-Muḥtasib who wrote the manual is the same as the Muḥammad b. Aḥmad b. Bassām who wrote the treatise on Tinnīs. Also, Ibn Bassām's manual begins with a reference to al-Shayzarī, which Gari does not acknowledge. As described below, the manual of Ibn Bassām contains a far greater range of market products than do the manuals of al-Shayzarī and Ibn al-Ukhuwwa, suggesting a much larger market. To further investigate the issue of dating, the products that Ibn Bassām uniquely mentions could be studied to more precisely determine the date of his manual, as could references to coinage. Historical chronicles should also be consulted for information about the practice of the *muḥtasib* in Tinnīs before circa 1050 that might help link the manual to that place and time. It is also possible that the manual was written after al-Shayzarī's and even after Ibn al-Ukhuwwa's but the name of the author was lost, and the name Ibn Bassām was attached to it. Until further evidence is found, I follow the current prevailing view that Ibn Bassām wrote his manual after al-Shayzarī and Ibn al-Ukhuwwa, but my usage of the manuals does not depend on the accuracy of this ordering.

first in the chapter on that topic in his manual, just as al-Shayzarī discussed the weights and measures of Syria before those of other towns.[78] In the manual, Ibn Bassām used the phrase "in the days of my service in *ḥisba*," indicating that he had been a *muḥtasib*.[79]

Ibn Bassām's book, with 118 chapters, is the longest of the three manuals. It is even more explicit and detailed on factual matters than the other two, leaving as little to the *muḥtasib*'s discretion as possible. He covered all of the same crafts as al-Shayzarī and Ibn al-Ukhuwwa and added many more, mainly specialized trades such as punchers of holes in shoe leather,[80] makers of clay jars used for storing water,[81] and makers of tar.[82] Ibn Bassām's chapters are shorter than those of the other two manuals and succinctly deal with the product, ware, or service, and with ways that the consumer can be cheated. Most chapters give standards for the ingredients and for the process of making the commodity and tell the *muḥtasib* how to detect fraud and adulteration for that item. Ibn Bassām did not mention varying opinions nor did he discuss the broader issue of the scope of the *muḥtasib*'s jurisdiction beyond the brief summary statement on qualifications and jurisdiction that appeared exactly as in al-Shayzarī's manual.

Ibn Bassām's manual envisions a *muḥtasib* who would use an expert (*ʿarīf*) for the regulation of virtually every craft and product; these experts would be individuals from within that particular market area who serve as some kind of informant and liaison between market participants and the *muḥtasib*.[83] Whereas the other two manuals permit reliance on such experts, Ibn Bassām presents them as necessary. It seems that the market he had in mind when writing his manual was far more diverse than al-Shayzarī's and Ibn al-Ukhuwwa's, necessitating an extensive network of expert-assistants, or perhaps Ibn Bassām was simply more meticulous in including every trade and product existing in the market he observed, and also thought that assistants were necessary for each. For Ibn Bassām, the office was administratively sophisticated but intellectually narrow—his *muḥtasib* knows less about more. The *muḥtasib* and his assistants should work across a wider range of goods and trades than was contemplated by the other two, and should rely upon rules that are clearer and simpler, refraining from matters about which there is any

[78] The editor relied upon two manuscripts: (1) a manuscript copied in 844/[1440] in the Library of Aḥmad the Third in Istanbul (no. 2304, adabiyyāt collection 20), which served as his primary manuscript in the editorial process; and (2) a manuscript from the Egyptian National Library, copied in 1321/[1903-4] (ijtimāʿ collection 25, films 27559 and 17215—it was apparently filmed twice). In addition, I found another microfilm copy of the manual in the Egyptian National Library, copied in 1195/[1780–1] (ijtimāʿ ṭalaʿat collection 614, no film number). The first modern scholarly attention to Ibn Bassām's manual seems to have come from Louis Cheikho, who published in 1907–8 two articles on the manual, which include summaries and complete chapters of the manual. Cheikho, "*Kitāb Nihāyat al-rutba fī ṭalab al-ḥisba*." Citations herein are to al-Sāmarrāʾī's edition.

[79] Ibn Bassām, *Nihāyat al-rutba*, p. jīm (editor's introduction).

[80] Ibid., 129.

[81] Ibid., 134.

[82] Ibid., 140.

[83] Ibid., 17–18. Possibly a copyist's error left out the formulaic "the *muḥtasib* should appoint an *ʿarīf*" at the beginning of each of the chapters where it is not found rather than it having been the author's intention for the *muḥtasib* not to have assistants in regulating those particular trades.

doubt or complexity in the rules. Ibn Bassām seemed to assume that the *muḥtasib* will not engage in complex legal thinking, and instead provided him with very basic rules.

The manuals are a particular kind of legal text that presents simplified rules of doctrine embellished with examples from the market. The familiarity of any particular *muḥtasib* with the rules, however, either independently or as expressed in the manuals, depended on that individual's personal abilities and talents. A *muḥtasib* who studied doctrine and was considered highly learned would know the details above and beyond what was presented in the manuals, but a *muḥtasib* pulled from the ranks of the soldiers—as did happen at the end of the Mamluk period—might have had only basic Arabic literacy in which case the manuals would have been difficult reading. The less learned *muḥtasib* probably relied more heavily on common understandings of the position's jurisdiction and responsibilities and the sultan's instructions. The last section turns to this issue: the biographical details of those appointed to the post.

The *muḥtasib*s of Cairo and Fustat

Al-Māwardī and the authors of the manuals listed the qualifications necessary for the position of *muḥtasib*, but these qualifications in the abstract do not provide any indication of what kind of people, with what specific characteristics, actually held the position in Mamluk Cairo and Fustat. Different backgrounds affected the performance of the individuals in the position, since they obviously did not leave behind their identities once they received the appointment. The *muḥtasib*s can almost always be identified, and some even merited an entry in a biographical dictionary, allowing for a careful consideration of how their individual situations might have influenced the events studied in this book.

Even though the sultan appointed the official, he did not simply choose people believed to be loyal. Nor did dismissal from the position of *muḥtasib* necessarily signify disfavor with the sultan. In fact, it was more often the case that the individual would continue in public service, appointed to other, and even more prestigious, positions that signaled favor with the Mamluk elite. Typical positions that *muḥtasib*s went on to hold include judge (*qāḍī*) and for those with particular connections to the Mamluk rulers, military judge (*qāḍī ʿaskar*). The position of *muḥtasib* was not an inherited one and the biographical dictionary entries indicate that very few of the *muḥtasib*s had a relative who also held the position.

The *muḥtasib* was compensated for his work, and the source of that compensation changed over time. Initially, the position was paid from the treasury.[84] At some point in the middle of the Mamluk period, however, this changed, and the *muḥtasib* was expected to extract funds from the people he regulated to compensate himself (and was also supposed to collect additional amounts to submit to the

[84] For al-Māwardī, for example, one difference between the appointed *muḥtasib* and the volunteer was that the appointed official was paid from the treasury. Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 300.

sultan). The first mention of payment accompanying an appointment to the position for Cairo was in 789/1387, when Najm al-Dīn al-Ṭanbadī (d. 800/1398) was appointed *muḥtasib* of Cairo in return for a pledge to pay 50,000 silver *dirham*s.[85] Payment for the office in Fustat is documented for 783/1381.[86] Al-Ṭanbadī's promise to make this payment caused him severe trouble, which will be seen in a case in Chapter 3, and in general this kind of payment mechanism affected the dynamics between the appointing sultan, the *muḥtasib*, and the merchants or others from whom the *muḥtasib* was expected to extract funds. In such a compensation system, the merchants were the main source of money for the *muḥtasib*s, and the payments they made to the official have been called by different names depending on the source. Goitein found a mention in the Geniza documents that each shop had to pay a monthly fee to maintain a license, which was referred to as a *ḥisba* tax since it was paid to the *muḥtasib*.[87] The Muslim chroniclers typically referred to the payments made to the *muḥtasib* as *mushāhara*, indicating that they were paid monthly, as will be seen in a case in Chapter 8.[88]

The Mamluk-era *muḥtasib*s can be divided roughly into four groups: recognized jurists, or individuals with at least a strong educational background in the legal sciences; individuals with an administrative background; associates of the sultan or the amirs, who had neither strong scholarly nor administrative backgrounds; and soldiers or even the sultan himself.[89] Some of the individuals are known to have been affiliated with a particular school of law, and they represented all three Sunni schools except the Ḥanbalīs, which may have been more a matter of availability than any other consideration. Over the course of the Mamluk period, the presence of the jurist-*muḥtasib* tapers off and then disappears. Simultaneously, well-connected individuals and amirs begin to dominate the position, with even the sultan serving toward the end of the period briefly.[90] These trends suggest a change over time in the expectations by the sultan and perhaps society at large for the qualifications of the office.

[85] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:566. Al-ʿAsqalānī reported the payment as 50,000 silver *dirham*s, the value of which on that day was more than 2,000 *mithqāl*s of gold. Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:337.

[86] Ṣalāḥ al-Dīn Khalīl b. ʿAbd al-Muʿṭī b. ʿAbd al-Muḥsin (death date unknown) was appointed *muḥtasib* of Fustat in Shawwāl 783/1381 upon the pledge to pay an unspecified amount of money. He was dismissed towards the beginning of 784/1382. Al-Maqrīzī, *Kitāb al-Sulūk*, 3:454, 467; Wiet, *Les Biographies du Manhal Safi*, 116–117.

[87] Goitein, *A Mediterranean Society*, 1:269–270.

[88] Ibn Iyās, *Badāʾiʿ al-zuhūr*, 4:328.

[89] The historical sources that provide bibliographical information can be misleading because they say more about those with scholarly credentials. The length of the biography does not indicate that they were more active as *muḥtasib*, however—the relationship was typically inverse.

[90] According to al-Qalqashandī, "men of the pen" held the position until the time of al-Muʾayyad Shaykh (r. 1412–21). Al-Qalqashandī, *Ṣubḥ al-aʿshā*, 11:210. It is not clear how the category of "men of the pen" would translate into precise qualifications, but it is generally accurate that the amir-*muḥtasib* starts to appear in the fifteenth century. Carl Petry found that for the fifteenth century, the prior experience that a *muḥtasib* most likely had was comptroller (*nāẓir*), suggesting that financial experience in the administration was an important credential in the sultan's eyes at that time. Petry, *The Civilian Elite of Cairo in the Later Middle Ages*, 224.

Jurists

A few *muḥtasib*s clearly were part of the legal scholarly group. Although not many, they were enough to form a distinct cohort. Indicators of this type of person come from biographical reports, which state what, where, and with whom they studied, note judicial positions and teaching positions, list the books they authored, and comment on their legal skills and intelligence. Those with scholarly credentials served in Cairo in far greater numbers than in Fustat; for both cities the scholarly types clustered toward the beginning of the Mamluk period.[91] These two observations suggest some hypotheses. The sultan and others with influence over the appointment process may have valued a scholarly background at the beginning of the period, but over time administrative experience of a more practical kind became more significant. This change also may have been a function of the kinds of people who wanted to hold the position; paying or pledging for the position up front—then recouping that investment—might have been beyond the interest or skills of a jurist.

One *muḥtasib* who served in Fustat at the beginning of the period exemplifies a juristic profile. Najm al-Dīn Aḥmad b. Muḥammad b. ʿAlī b. al-Rifʿa al-Anṣārī (d. 710/1310), known as Ibn al-Rifʿa, was a native of Fustat and served as *muḥtasib* until nearly the end of his life, resigning only when advanced age made carrying out his duties difficult. Before resigning from the position of *muḥtasib* in Fustat, he left his position of assistant judge to the Shāfiʿī chief judge Ibn Daqīq al-ʿĪd.[92] Ibn al-Rifʿa was a major Shāfiʿī scholar. He studied *fiqh* with Ibn Bint al-Aʿazz,[93] among others, transmitted *ḥadīth*, and issued fatwas. He taught at the Muʿizziyya *madrasa*.[94] He was praised extensively by his contemporaries for his learning. The renowned Ḥanbalī jurist Ibn Taymiyya debated Ibn al-Rifʿa, then expressed his respect for his knowledge by stating that he had "rules of the Shāfiʿī school dripping from his beard."[95] Al-Ṣafadī stated that "in our time, the title *al-faqīh* was only applied to him,"[96] and al-Subkī included Ibn al-Rifʿa in his list of *mujtahid*s in Egypt.[97]

Ibn al-Rifʿa was one of the more prolific *muḥtasib*s of the Mamluk period. He wrote a commentary on *al-Tanbīh* of Ibrāhīm b. ʿAlī al-Shīrāzī (d. 1083)[98] and on

[91] A study of the *muḥtasib*s before the Mamluk period is needed in order to determine if the preference for the jurist-*muḥtasib* continued from the Ayyubid period.

[92] Ibn Taghrībirdī, *al-Manhal al-ṣāfī*, 2:82–83; Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 1:304–306; al-Ṣafadī, *Aʿyān al-ʿaṣr*, 1:324–326.

[93] Chief Shāfiʿī judge of Egypt from prior to 663/1265 to 665/1267, when he died in office. He also served as *muḥtasib* of Cairo. Ibn al-ʿImād, *Shadharāt al-dhahab*, 5:319–320; al-Suyūṭī, *Ḥusn al-muḥāḍara*, 2:168.

[94] Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 1:303–304; al-Ṣafadī, *Aʿyān al-ʿaṣr*; 1:326. The first Mamluk sultan, al-Muʿizz Aybak, established this *madrasa* in Fustat, but little else is known about it. Berkey, *The Transmission of Knowledge in Medieval Cairo*, 61.

[95] Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 1:304.

[96] Al-Ṣafadī, *Aʿyān al-ʿaṣr*, 1:325.

[97] Al-Suyūṭī, *Ḥusn al-muḥāḍara*, 1:320.

[98] This commentary was published in 2009. Ibn al-Rifʿa, *Kifāyat al-nabīh*.

al-Wasīṭ of al-Ghazzālī, which others completed after he died.[99] He wrote two treatises relevant to the work of the *muḥtasib*: *Ḥukm al-mikyāl wa-l-mīzān* (a treatise on weights and measures)[100] and *al-Nafā'is fī hadm al-kanā'is* (a treatise on destruction of churches and synagogues).[101] Two *muḥtasib* manuals are also incorrectly attributed to him: *al-Rutba fī ṭalab al-ḥisba*[102] and *Badhl al-naṣā'iḥ al-shar'iyya*.[103]

Later in the Mamluk period, several scholars held the position of *muḥtasib* who were both jurists to some degree and also important historians. The historian al-Maqrīzī, who is the source of so much of our information about the *muḥtasib*s, is such a person. He was appointed *muḥtasib* in the month of Rajab in 801/March 1399 and served only until the end of that year, replaced shortly after the death of Sultan Barqūq by al-'Aynī (who is discussed below).[104] He held the position briefly two more times: in 802/1400 (when he replaced al-'Aynī) and again in 807/1404. By the time of his third appointment, al-Maqrīzī was critical of official policy and took the position unwillingly and under pressure by the sultan.[105]

Al-Maqrīzī grew up in Cairo and studied Ḥanafī *fiqh*, which was the legal school of his grandfather, along with the other typical subjects. He became a Shāfi'ī in his early twenties, however, which was his father's affiliation. In addition to serving as *muḥtasib*, al-Maqrīzī also held the positions of assistant judge, preacher in the mosque of 'Amr and in the *madrasa* of Sultan al-Ḥasan, *imām* at the mosque of al-Ḥākim, and teacher of *ḥadīth* in several *madrasa*s in Damascus and Cairo. His writings are numerous and mainly in the field of history, the most prominent of which are the chronicle *Kitāb al-Sulūk li-ma'rifat duwal al-mulūk* and the topography *al-Mawā'iẓ wa-l-i'tibār fī dhikr al-khiṭaṭ wa-l-āthār*.[106]

The first term of Badr al-Dīn Maḥmūd b. Aḥmad b. Mūsā (d. 855/1451), known as al-'Aynī, began at the end of 801/mid-1399, when he replaced al-Maqrīzī in the position, beginning a rivalry between the two men.[107] He held the position only until the beginning of 802/late 1399, but went on to hold the office of

[99] Ibn Ḥajar al-'Asqalānī, *al-Durar al-kāmina*, 1:304.

[100] Ibid.; al-Suyūṭī, *Ḥusn al-muḥāḍara*, 1:320. This is the title as listed in the biographical dictionaries, but it was published as *Kitāb al-Īḍāḥ wa-l-tibyān fī ma'rifat al-mikyāl wa-l-mīzān*.

[101] Ibn Ḥajar al-'Asqalānī, *al-Durar al-kāmina*, 1:304; al-Suyūṭī, *Ḥusn al-muḥāḍara*, 1:320; al-Ṣafadī, *A'yān al-'aṣr*, 1:326. Only one manuscript is known to remain of this treatise, and that is in the manuscript collection of al-Azhar in Cairo.

[102] The only known existing copy was made in 987/[1579–80], and a microfilm copy can be found in the Arab League Manuscript Institute in Cairo (siyāsa collection 25). The text is virtually identical to Ibn al-Ukhuwwa's manual. There is no evidence that Ibn al-Rif'a was ever known as Ibn al-Ukhuwwa, and this title is not mentioned in biographies of Ibn al-Rif'a.

[103] This title is not mentioned in biographies of Ibn al-Rif'a but can be found in Brockelmann, *GAL*, 2:165–166 and Supp., 2:164. Only one copy of the text is known to exist, located in the Bibliothèque Nationale (no. 2451). The text is mainly a combination of Ibn al-Ukhuwwa's manual and al-Subkī's *Mu'īd al-ni'am*.

[104] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:930, 970.

[105] Ibid., 3:1155. His third tenure is also mentioned by Adel Allouche in *Mamluk Economics*, 3.

[106] Ibn Taghrībirdī, *al-Manhal al-ṣāfī*, 1:394–399; Broadbridge, "Academic Rivalry and the Patronage System in Fifteenth-Century Egypt," 91.

[107] See Broadbridge, "Academic Rivalry and the Patronage System in Fifteenth-Century Egypt." Al-Maqrīzī criticized al-'Aynī's abilities as *muḥtasib*, blaming him in one case of a bread shortage for his leniency on bakers and other sellers of food. Ibid., 101–102.

muḥtasib seven more times.[108] Born in Aintab, he arrived in Cairo via Jerusalem and first resided at the Barqūqiyya *khānqāh-madrasa*,[109] studying *fiqh*, *uṣūl al-fiqh* (jurisprudence), and rhetoric. When Sultan Barqūq died, al-ʿAynī's supporter, the amir Jakam, helped him obtain the position of *muḥtasib*. Al-ʿAynī had a successful career: he taught *ḥadīth* at the Muʾayyadiyya *madrasa*, was appointed *nāẓir al-aḥbās* (comptroller of trust properties) in 803/1400, then became chief Ḥanafī judge in 829/1425 and held the post for twelve years. In 846/1442, he simultaneously held three positions: *muḥtasib*, *nāẓir al-aḥbās*, and chief Ḥanafī judge. Al-ʿAynī lost favor with the ruling elite towards the end of his life and died in 855/1451 at the age of ninety-three.[110]

His works are numerous, the most prominent being his general history, *ʿIqd al-jumān fī tārīkh ahl al-zamān*, and his commentary on the *Ṣaḥīḥ* of al-Bukhārī. Some of his works were in Turkish, and his knowledge of that language assisted in developing good relations with the sultans, with whom he had fairly close ties, and he even composed praises in their honor. He translated the Ḥanafī jurist al-Qudūrī's treatise into Turkish and translated his own chronicle into Turkish orally for the sultans.[111]

The last example of the jurist-*muḥtasib*, Ṣadr al-Dīn Aḥmad b. al-ʿAjamī, was a contemporary of both al-Maqrīzī and al-ʿAynī, and their generation produced the last of the *muḥtasib*s who can be considered jurists. In Ibn al-ʿAjamī's case, he was considered knowledgeable in Ḥanafī *fiqh* and he also had good relations with the sultans under whom he served.[112] Born in Cairo, he had a traditional education in Arabic, grammar, and *fiqh*.[113] He served five short terms as *muḥtasib* (the first of which was in 808/1405), taught at a number of *madrasa*s, and also held positions in Damascus, including *nāẓir al-jaysh* (comptroller of the army).[114] Upon his death in 833/1430 during a wave of the plague, al-Maqrīzī praised him as a prominent Ḥanafī and for being particularly learned in grammar.[115] Badr al-Dīn al-ʿAynī, however, was less flattering, and wrote that he had poor social skills and as a result many people despised him. Al-ʿAynī also said that of the many positions Ibn al-ʿAjamī held, he did not leave any of them on good terms.[116] By the time of his service as *muḥtasib*, payment to take the position of *muḥtasib* had become common. For example, Ibn al-ʿAjamī was dismissed from his third term in 815/

[108] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:970, 977; Ibn Iyās, *Badāʾiʿ al-zuhūr*, 2:28–29.

[109] See Petry, *The Civilian Elite of Cairo in the Later Middle Ages*, 333, for a description of the complex.

[110] Al-Sakhāwī, *al-Ḍawʾ al-lāmiʿ*, 10:131–132; Broadbridge, "Academic Rivalry and the Patronage System in Fifteenth-Century Egypt," 106.

[111] Al-Sakhāwī, *al-Ḍawʾ al-lāmiʿ*, 10:131–132.

[112] On one occasion he was in the company of Sultan al-Muʾayyad Shaykh when the sultan told those gathered around him of a dream he had had about the head of his army losing his turban, which the sultan thought foretold defeat. Ibn al-ʿAjamī quickly found a way to reinterpret the dream as a sign of impending victory, further gaining the good graces of the sultan. Al-Sakhāwī, *al-Ḍawʾ al-lāmiʿ*, 2: 223–224.

[113] Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 3:442–443.

[114] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:848; Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 15:167–168.

[115] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:848.

[116] Al-Sakhāwī, *al-Ḍawʾ al-lāmiʿ*, 2:224.

1412 because the new *muḥtasib* had pledged a substantial amount of money, more than Ibn al-ʿAjamī, it seems. Ibn al-ʿAjamī was not completely relieved of his monetary commitment, however, and was taken to the home of an amir and forced to produce the amount that he had promised when he took the position.[117]

Administrators

Many individuals who held the position in the early and middle years of the Mamluk period are best described as solid administrators. They had minimal education, but unlike the next category of *muḥtasib*s, their appointment seems to have been mainly for merit in terms of ability to carry out the demands of the job efficiently and effectively and not merely for friendship with the Mamluk powers. A good example is Ḍiyāʾ al-Dīn Yūsuf b. Abī Bakr b. Muḥammad b. Khaṭīb Bayt al-Abār al-Shāmī, who will figure in cases in Chapters 5, 6, 8, and 9. Ḍiyāʾ al-Dīn's professional experience was squarely in the administrative sphere—he did not teach at a school, he was never a judge, and no writings are attributed to him. His career was connected to the sultan and certain amirs, but he also had independent talents. He was born in Damascus and devoted himself to various positions there, including serving the viceroy (*nāʾib*) of Damascus, Amir Tankiz.[118] While in Damascus, he apparently met Jalāl al-Dīn al-Qazwīnī, chief judge of Damascus at that time.[119] When Jalāl al-Dīn became chief judge of Egypt in 727/1327, he asked Sultan al-Nāṣir Muḥammad to summon Ḍiyāʾ al-Dīn to Egypt.[120]

Early in his career he held the positions of comptroller of the granaries (*nāẓir al-ahrāʾ*), comptroller of the Manṣūrī hospital (*nāẓir al-māristān*), and comptroller of properties of pious endowments (*nāẓir al-awqāf*).[121] Ḍiyāʾ al-Dīn's first appointment as *muḥtasib* was to the position in Fustat in 736/1336 at a time of rising food prices that threatened both Cairo and Fustat;[122] he was then appointed *muḥtasib* of Cairo in 737/1336 and held the position in both cities for about six months. He also served in Cairo from 742/1341 to 748/1347, and for a brief period in 752/1352.[123]

[117] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:253.

[118] Irwin, *The Middle East in the Middle Ages*, 107.

[119] Chief Shāfiʿī judge of Egypt 727–38/1327–38. He had served as chief judge in Damascus prior to being transferred to Egypt. He returned to serve again as chief judge in Damascus, where he died in office in 739/1338. Salibi, "Listes chronologiques des grands cadis de l'Égypte sous les Mamelouks," 85.

[120] Al-Ṣafadī, *Aʿyān al-ʿaṣr*, 5:613; Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 5:258.

[121] The Manṣūrī hospital, founded by Sultan al-Manṣūr Qalāwūn in 683/1284, was the most impressive hospital in Egypt at its time and had one of the largest budgets of any civil institution in the city. Petry, *The Civilian Elite of Cairo in the Later Middle Ages*, 219, 332.

[122] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:394, 421.

[123] Ibid., 2:394, 414, 421, 444, 579, 738, 835, 852; al-Ṣafadī, *Aʿyān al-ʿaṣr*, 5:612–614; Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 5:257–258.

Mamluk connections as main credential

Some *muḥtasib*s had administrative experience and even some education, but their connections to amirs and possibly the sultan seemed to be the main reason behind the appointment. Such people were appointed with increasing frequency beginning about the middle of the Mamluk period and, towards the end, this type, along with the soldier-*muḥtasib*, dominated the position. Jamāl al-Dīn al-ʿAjamī, who will appear in cases in Chapters 3, 7, 8, and 9, was appointed *muḥtasib* of Cairo for the first time at the end of 778/early 1377 and he served only briefly, until the month of Rabīʿ I in 779/July 1377.[124] He served three more times: 779–82/1377–80;[125] 782–3/1380–1;[126] and 783–9/1381–7.[127] He was originally from Kayseri, and came to Cairo during the reign of Sultan al-Ashraf Shaʿbān (r. 1363–77), where he resided at the *madrasa* of Ṣarghitmish.[128] His talents were in Arabic language and rhetoric, although he had studied some *fiqh*, and he earned a meager living by teaching *mamlūk*s of amirs. Amir Maliktimur, as well as several other amirs with whom Jamāl al-Dīn had cultivated good relations, assisted with his appointment to *muḥtasib* following Sultan al-Ashraf's death.[129]

Jamāl al-Dīn was fluent in Arabic, Persian, and Turkish.[130] We do not know about his formal education. Biographers emphasized his ability to adjust to and succeed in a wide variety of social contexts over any particular educational or intellectual attributes. According to Ibn al-Ṣayrafī, Jamāl al-Dīn was a clever man who served the notables of the state and gave them gifts.[131] While he was caught up in several political disputes among the amirs, he was well regarded by the people and the sultan and continued to be reappointed when the situation called for an effective official. As Ibn Ḥajar noted, he had a great ability to deal with the sultan and the people.[132] Indeed, few *muḥtasib*s were as successful as he was in coping with rising prices and food shortages. While his initial appointment seems to have been due to connections, he performed to the sultan's satisfaction and continued to climb the ladder of success. After leaving the post of *muḥtasib* for the final time, he was promoted from *muḥtasib* to military judge, a position that indicated sultanic approval and trust, and he went on to become Egypt's chief Ḥanafī judge in 793/1391.[133]

Another *muḥtasib* with Mamluk connections as his main credential was ʿAlāʾ al-Dīn ʿAlī b. Muḥammad b. al-Uṭrūsh al-Saqaṭī (d. 758/1356), a Ḥanafī, and he

[124] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:292, 311.
[125] Ibid., 3:314, 387.
[126] Ibid., 3:395, 447–448.
[127] Ibid., 3:457, 566.
[128] This was the most eminent of the amirate *madrasa*s; it was founded in 1356 to the east of the mosque of Ibn Ṭūlūn. Petry, *The Civilian Elite of Cairo in the Later Middle Ages*, 338.
[129] Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 5:105; idem, *Rafʿ al-iṣr*, 433; idem, *Inbāʾ al-ghumr*, 1:541.
[130] Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:542.
[131] Ibn al-Ṣayrafī, *Nuzhat al-nufūs*, 1:451.
[132] Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 5:106.
[133] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:744.

had a difficult time in office and in particular with food prices (as seen in Chapter 7). He was appointed *muḥtasib* of Cairo in the month of Rajab in 748/October 1347 and was dismissed in 752/1351.[134] His professional career began in Damascus, where, in 744/1343, he was appointed its *muḥtasib*. He gained that position with the assistance of an amir, and Damascenes were upset with his appointment "due to his ignorance of the law."[135] Nevertheless, he went on to Cairo and became comptroller of the Manṣūrī hospital in 745/1344.[136] In 749/1348, Ibn al-Uṭrūsh was appointed military judge (*qāḍī ʿaskar*) of the Ḥanafī school and held that position until his death. That he served simultaneously as *muḥtasib* and military judge is significant; the two positions had a sufficiently different focus that if a *muḥtasib* was going to serve as military judge, a position that created a firm connection to the sultan and his amirs, it was typically after dismissal from the position of *muḥtasib*.[137]

Ibn al-Uṭrūsh's dismissal as *muḥtasib* came after a brief bread crisis during which he attempted to raise the price of bread. The people threw stones at his door and the *wālī* of Cairo had to rescue him.[138] The immediate cause of his dismissal, however, was a personal conflict with the viceroy. Ibn al-Uṭrūsh said something insulting about him, the matter reached his ears, and, in response, he used his influence with the sultan to bring about Ibn al-Uṭrūsh's dismissal from the positions of both *muḥtasib* and hospital comptroller.[139] Ibn al-Uṭrūsh managed to get reappointed to both in 752/1352 by offering gifts to an influential group of amirs.[140]

The final example of a *muḥtasib* with Mamluk connections, al-Zaynī Barakāt b. Mūsā, actually belongs in a category all of his own—he was unique for his ability to thrive and prosper in the difficult environment of the final decades of the Mamluk period.[141] He was a civilian but had the toughness of the military elite, and his main qualification was his indispensability. No information about any schooling or legal training is mentioned in the many reports about him. He was appointed *muḥtasib* of Cairo in 910/1505 by Sultan al-Ghawrī. At that time he was already considered among the most esteemed men in Egypt, and his power increased substantially as a result of the appointment.[142] With only three brief dismissals from office, he served through the final days of the Mamluk Empire.

[134] Ibid., 2:738, 835–836. Al-Maqrīzī stated that he "returned" to the office of *ḥisba*, which must be in reference to his previous tenure in Damascus, since this clearly was his first time to be appointed in Cairo.

[135] Ibid., 2:653.

[136] Ibid., 2:672.

[137] Ibn al-Uṭrūsh's appointment to military judge was also unusual because it was within the Ḥanafī school. Al-Maqrīzī reported that prior to that time there had only been a *qāḍī ʿaskar* for the Shāfiʿī school. Ibid., 2:772. The suggestion that there was a need for a Ḥanafī and a Shāfiʿī military judge supports the idea that *fiqh* was used in these courts and that there were differences among the schools that mattered to the sultan.

[138] Ibid., 2:758.

[139] Ibid., 2:835.

[140] Ibid., 2:835–836, 852.

[141] A brief biography of al-Zaynī Barakāt appears in Berkey, "The *Muḥtasib*s of Cairo under the Mamluks," 273–274.

[142] Ibn Iyās, *Badāʾiʿ al-zuhūr*, 4:75.

While serving as *muḥtasib*, al-Zaynī Barakāt also held other positions, at least sixteen of them by one count, and at times it is difficult to determine in what capacity he acted, since historians reported nearly everything he did as undertaken by "the *muḥtasib*" al-Zaynī Barakāt.[143] The sultan and others in the administration often turned over criminal suspects or people whom they did not like—or who they thought were hiding ill-gotten money—to al-Zaynī Barakāt to take to his home, which included a dungeon-like chamber suited for interrogation purposes.[144] It seems that al-Zaynī Barakāt kept some of the funds he was able to extract from the detainee as part of an understanding with the sultan. In one case, the sultan recaptured a prisoner and turned him over to Barakāt, who "beat him in indescribable ways."[145] In these kinds of reports, it seems that he was acting in the capacity not so much of *muḥtasib* but rather of a very powerful trusted servant of the sultan.

Al-Zaynī Barakāt was not always in the good graces of the sultan, yet the sultan needed him too much to dispose of him entirely. In 914/1509, Sultan al-Ghawrī fired him from all his positions, replacing him as *muḥtasib* with the unfortunate al-Jamālī Yūsuf al-Badrī. During the few days that he was in office, there was a shortage of wheat, and bread could not be found in the markets. When the people were on the verge of stoning al-Badrī, the sultan returned al-Zaynī Barakāt to the position. The people rejoiced and the markets steadied. This was not the first time that the return of a popular *muḥtasib* received a warm welcome from the crowds, but such popular devotion to him was indeed unprecedented.[146] Perhaps he was in such control of the markets that he orchestrated the bread crisis that led to al-Badrī's removal and his own reinstatement as *muḥtasib*.[147]

According to the chronicles, al-Zaynī Barakāt's main activities included collecting unpopular taxes from merchants, setting prices, and enforcing the use of copper coins in ways that were detrimental to consumers, none of which would have made him popular with merchants or the population generally.[148] Yet his knowledge of the functioning of the market and his skill at making compromises and special deals were so great that he managed to keep the entire system functioning while appearing as the only one who could do so.[149] Indeed, once the conquering

[143] Ibid., 4:144, reports sixteen positions.

[144] There are many examples of this kind. See, e.g., ibid., 4:98, 109, 114–115, 264, 268, 279, 300–301, 381.

[145] Ibid., 4:131.

[146] See, for example, the incident from 918/1512 when the sultan imprisoned him for eight days due to harsh words he uttered in front of the sultan in a quarrel with the same al-Badrī. When he was released, the people decorated the streets, lit lanterns, and even festooned his house. Ibid., 4:274–275. Carl Petry referred to al-Badrī as one of al-Zaynī Barakāt's "bitterest enemies," which may have also been the case several years earlier when al-Badrī replaced him briefly in office. Petry, *Protectors or Praetorians?*, 146.

[147] This was Petry's supposition. Petry, *Protectors or Praetorians?*, 145.

[148] He frequently provided banquets to the sultan, especially during Ramadan and when the sultan was outside of the Citadel, such as at the Nilometer. See, e.g., Ibn Iyās, *Badā'iʿ al-zuhūr*, 4:125, 143, 229, 244, 265, 325, 328, 397–398, 468, 474.

[149] In modern times, his character was the subject of the 1974 novel *al-Zaynī Barakāt* by Jamāl al-Ghīṭānī, who based his story on the chronicle of Ibn Iyās. The English-language translator of the novel wrote that "the most striking impression of the historical Zayni Barakat conveyed by Ibn Iyās is that he is a survivor." Abdel Wahab (trans.), *Zayni Barakat*, xvii.

Ottomans took control of Cairo in 1517, al-Zaynī Barakāt continued on this path: he got himself in trouble for dealing in Ottoman coins yet still succeeded in being appointed *muḥtasib* to the new regime.[150]

Mamluks

Toward the end of the Mamluk period, soldiers sometimes held the position of *muḥtasib*. Dawlat Khuja (d. 841/1438), who will appear in Chapter 4, was one of Sultan Barqūq's soldiers. He held a number of military and administrative positions, including governor (*wālī*) of Cairo. He was appointed *muḥtasib* at the end of his career, during a plague when the sultan was seeking an energetic man to carry out his orders. Al-Maqrīzī, who did not hide his disapproval of soldiers holding the position, wrote that Dawlat Khuja was not a Muslim and did not fear God.[151] He only served as *muḥtasib* briefly, and died at an advanced age soon after his dismissal.

Another soldier-*muḥtasib* was Kasbāy, who held the position for a lengthy ten-year term, from 891/1486 to 901/1495. Like Dawlat Khuja, almost nothing is known of his background prior to his appointment to office, and even then, what was recorded about him typically involved blunt use of force or other coercive tactics, such as beating merchants for failing to sell bread or, as will be seen in Chapter 9, extracting money from merchants for the sultan's war chest. He was quite successful within the Mamluk system, however, and after he left the office of *muḥtasib* he became a high-ranking military commander.[152]

Conclusions

At the heart of the position of *muḥtasib* is the seemingly simple Quranic injunction to command right and forbid wrong, but such simplicity turns complex as soon as the operationalization of this injunction is considered. A study of the concept of commanding right and forbidding wrong as it applies to individual Muslims, or volunteers in al-Māwardī's terminology, depends upon the extensive theological and juristic writings that Michael Cook examined in great depth in *Commanding Right and Forbidding Wrong in Islamic Thought*. This research here, however, approaches the injunction from the particular perspective of the official who was appointed by a ruler to carry it out. While the authority for the actions of both the individual volunteer and the *muḥtasib* are connected on a very basic level, a separate body of considerations and associated literature developed to address the particular questions and problems that come with granting an official the full sanction and enforcement power of the ruler to carry out an injunction that on its face does not have a clear meaning or scope.

[150] Ibn Iyās, *Badā'iʿ al-zuhūr*, 4:494; 5:214.
[151] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:1063.
[152] Specifically, he was an amir of 100 horsemen with a battlefield command of 1,000 troops (*amīr mi'a wa-muqaddam alf*). Ibn Iyās, *Badā'iʿ al-zuhūr*, 3:234, 317, 354–355.

Writing in the early eleventh century, al-Māwardī worked to define the jurisdiction of the *muḥtasib*, and he did so mainly vis-à-vis two other related legal institutions: the position of the judge, a *fiqh*-based institution, and the sultan's *maẓālim* forum, a *siyāsa*-based one. Al-Māwardī also made the key observation that the *muḥtasib* was conceptually situated between the judge and the *maẓālim* court such that comparisons and contrasts with each were highly instructive. He clearly and concisely defined the jurisdiction of the *muḥtasib*: commanding right and forbidding wrong when the commission or neglect is publicly manifest and when the right and wrong are matters that the jurists largely agreed upon as such. Al-Māwardī's analysis was not just relevant in his own time, but he identified core issues inherent in a position that combines *fiqh* and *siyāsa* authority, which helps to frame the analysis of the official in the Mamluk period as well.

In the Mamluk period, Cairo and Fustat each had its own *muḥtasib*, and each official was also responsible for a large expanse of land beyond the urban centers, for which deputies must have been essential. Within both Cairo and Fustat, the *muḥtasib*s and their assistants patrolled the city's public spaces, based from some kind of central station (called a *dikka* in Cairo) located in the market areas. The sultan appointed the *muḥtasib*s, who served until death or dismissal. An appointment document charged the *muḥtasib* with the welfare of the Muslims, and then described in fairly general terms the official's substantive jurisdiction, with a strong emphasis on commercial transactions in the marketplace. Manuals that were written for the express purpose of providing clear rules of *fiqh* along with practical details to the *muḥtasib* may have guided those officials who consulted them. The styles of the three manuals relevant to the Mamluk period range from the short and simple rules of Ibn Bassām to the more complex presentation of Ibn al-Ukhuwwa, who often provided several views when jurists disagreed, making it unclear as to whether the *muḥtasib* should adopt one view or avoid regulating in that area altogether since it was one of disagreement. The manuals also provided guidance that a *muḥtasib* without much marketplace experience would find helpful, such as a detailed explanation of how bread makers typically try to cheat their customers.

The individual appointed to the position of *muḥtasib* had a range of instructional materials to draw upon: the sultan's appointment decree, the ongoing orders of the sultan, *fiqh* books, and the simplified *fiqh* rules and practical guidance of the manuals. The difficult question of how all of these sources interacted and influenced a particular *muḥtasib* is further complicated by another variable: the personal backgrounds of the individuals who held the position. For each man appointed, his own education, life experience, personal biases and presuppositions, and relations to the sultan and his amirs all influenced what sources of guidance were most persuasive, and they ultimately had an effect on how each particular case developed and to what result for the people involved. With all of the essential background details of the position of the *muḥtasib* now in place, the remainder of the book turns to the actions of the *muḥtasib*s in the Mamluk period.

3

Muslim devotional and pious practices

The arrival of the Mamluk sultans at the seat of power in Egypt did not require any change in the devotional practices (*ʿibādāt*) of the Egyptians. The Mamluks viewed themselves as defenders of Sunni Islam, continuing in a role begun by the Ayyubids before them. Muslim Egyptians continued to practice their faith according to their own beliefs and understandings. Likewise, jurists, acting as muftis, continued to guide and assist Muslims in understanding the details of legal matters such as praying and fasting.

In the area of devotional practice, the doctrine of which was developed in minute detail by the jurists,[1] the sultan might not be expected to interfere, and the *muḥtasib*'s appointment document from the sultan does not mention this area of behavior. But, as champions of Sunni Islam and the protectors of the caliphate, the Mamluk rulers did not view themselves as precluded from involvement in devotional practices of Muslim Egyptians, especially when they affected the authority of the sultans and the sultanate. Further, some matters of *ʿibādāt* depended on the involvement of the ruler. According to the Shāfiʿī jurist al-Māwardī, whose analysis of the *muḥtasib* was seen in the previous chapter, the ruler has eight primary duties, including serving as leader of the Friday and other community prayers or appointing someone to fulfill this task.[2]

What was the role, then, for the *muḥtasib* with regard to the *ʿibādāt*? He was expected to enforce the agreed-upon rules of doctrine, such as requiring men to attend Friday's congregational prayer when they are seen to be neglecting it (and presumably only when the minimum number of men present made the prayer obligatory according to all schools), and his jurisdiction may have included a Muslim openly violating the fast during Ramadan, although the *muḥtasib* is counseled not to jump to the conclusion that behavior is wrongful, even if it initially appears so. But the *muḥtasib*'s motivations in the Mamluk period, as far as we can discern them, were not always obviously promotion of pious practices, and circumstantial evidence and some speculation show the *muḥtasib*s acting in furtherance of a broad array of concerns and purposes.

[1] Books of *fiqh* begin with the *ʿibādāt*, covering first purity and purification, which are necessary to undertake prayer, followed by the topics of prayer, alms tax (*zakāt*), fasting, and pilgrimage.

[2] Al-Māwardī's concern was that the Friday prayer and some other special ones must be performed communally, and without a local ruler to maintain the mosque, ensure that the call to prayer is made on time, and lead the prayer if necessary, this essential component of a Muslim society might fail to be carried out. Other duties of the ruler he listed are organizing the army, making decisions about the positioning of troops, and ensuring their payment. Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 35.

Case 3.1. Prayer lessons for merchants

In 790/1388, the *muḥtasib* of Cairo, al-Ṭanbadī, assigned jurists (*fuqahāʾ*) to all of the markets of Cairo in order to teach merchants the basic *sūra*s from the Quran, such as the opening chapter (*Fātiḥa*) and others that they would need to recite in prayer. Each instructor received two *fulūs* (copper coins; sing. *fals*) from each shop per day of instruction.[3]

The requirement of prayer comprises five daily prayers, at dawn, noon, afternoon, sunset, and night, at specific times determined by the position of the sun in the sky. Each prayer session involves two or more units, with the basic contents of a unit (*rakʿa*) fairly consistent from prayer to prayer. A unit includes recitation of the opening chapter of the Quran and possibly another short chapter. The opening chapter, obligatory with every unit of prayer, is short,[4] and although it should be recited many times a day, the chronicle reports in this case suggest that some merchants still had not memorized it, nor did they know other passages that could be recited during prayer.

Why would the *muḥtasib* think that the merchants were unable to recite these Quranic passages? Unfortunately, there is no evidence to indicate why the religious knowledge of merchants was an immediate or obvious problem. Nor is it clear how the merchants' failure to pray properly came to the *muḥtasib*'s attention. Indeed, regular daily prayers may be performed privately, in which case the matter would be out of the *muḥtasib*'s jurisdiction. One obvious explanation is that the *muḥtasib* tried to improve prayer performance of Muslims as a core part of faith;[5] merchants, perhaps praying outside their shops, were making mistakes that could be seen by all. The *muḥtasib* al-Ṭanbadī did seem to have been concerned with pious practices, and he also made a decision in his official capacity regarding the content of the call to prayer (seen in Case 3.2). Perhaps ensuring proper devotional practices was an important goal for him as *muḥtasib* and he did not want to wait for specific problems to arise before acting.

The *muḥtasib* manuals do lodge responsibility with the *muḥtasib* for some aspects of prayer. They specify that the *muḥtasib* should encourage Muslim men to be diligent in going to the mosque for the Friday congregational prayer, which takes place

[3] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:574; Ibn al-Furāt, *Tārīkh*, 9:25; Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:352; Ibn al-Ṣayrafī, *Nuzhat al-nufūs*, 1:168. Ibn al-Furāt said that it was a good measure. Ibn al-Ṣayrafī reported that the *muḥtasib* dispatched men who had memorized the Quran (*ḥuffāẓ*, sing. *ḥāfiẓ*) to the markets.

[4] "All praise is due to God alone, the Sustainer of all the worlds, the Most Gracious, the Dispenser of Grace, Lord of the Day of Judgment. Thee alone do we worship, and unto Thee alone do we turn for aid. Guide us along the straight way—the way of those upon whom Thou hast bestowed Thy blessings, not of those who have been condemned [by Thee], nor of those who go astray." Quran 1:1. Muḥammad Asad (trans.).

[5] Ibn Rushd, for example, stated that the obligation to perform the obligatory prayers is so clearly established in the Quran and *sunna* and by consensus that no further discussion is necessary. Ibn Rushd, *Bidāyat al-mujtahid*, 1:169.

at approximately noon on that day.[6] Unlike the other prayers of the week, which can be done on one's own, the Friday prayer should take place in a mosque and is obligatory, on the condition that the minimum number of men in the locality is available.[7] Women may participate but are not required to do so; their number in the locality does not count toward the minimum. Ibn al-Ukhuwwa added in his manual that the *muḥtasib* should summon Muslims to gather for the Friday prayer and watch the people in the markets (which he called the "battlefield of Satan") at the time of the call. He added: "As for those who turn their attention from Friday prayer, preferring to seek a profit or to distract themselves with amusements, the *muḥtasib* should punish them in a way that humiliates them and detracts from their power and status."[8]

Attention to the Friday prayer fits neatly with what the *muḥtasib* is expected to do, because it is obligatory and its performance (or neglect) can be a public and evident matter. The technicalities of the performance of prayer are not mentioned in the manuals but they are closely related to the manuals' concerns, since performance of the Friday (or any other) prayer is not valid if the individual prays incorrectly. The attention in this case was to the daily prayers and not specifically the Friday communal one, but since the proper performance of the key components of prayer was an obligation to God, public performance of it that somehow violated agreed-upon rules would have been within the *muḥtasib*'s power to regulate.

Given the history of al-Ṭanbadī and the circumstances surrounding his appointment, another explanation for his actions also requires consideration. He may have sent the jurists out in order to bring in revenue, both for them and perhaps on the expectation that they would give him part of their earnings. (The chroniclers did not mention that according to some jurists, payment should not be received for instruction in basic religious matters.) Al-Ṭanbadī was appointed *muḥtasib* in 789/1387 after promising to pay 50,000 silver *dirhams*.[9] The circumstances of his dismissal from office included his failure to come up with the funds he had promised. Al-Maqrīzī reported that in Shawwāl of 791/September 1389, the amir Minṭāsh, exercising power on behalf of the young Sultan al-Ḥājjī, summoned al-Ṭanbadī and scolded him because the price of crops was low. Low prices meant low income for the amirs who owned this produce.[10] Minṭāsh beat al-Ṭanbadī and ordered him to pay the promised 50,000 *dirham*s, but Minṭāsh was persuaded by

[6] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 172; al-Shayzarī, *Nihāyat al-rutba*, 111; Ibn Bassām, *Nihāyat al-rutba*, 175. In contrast, Ibn Taymiyya's view of the *muḥtasib* would have the official enforcing all five daily prayers. Ibn Taymiyya, *al-Ḥisba fī al-islām*, 16–17.

[7] According to the Ḥanafīs, the minimum is four; the Shāfiʿīs require forty. Ibn Rushd, *Bidāyat al-mujtahid*, 1:294–295. Ibn al-Ukhuwwa's manual gives the Shāfiʿī minimum of forty. Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 174.

[8] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 174.

[9] See Chapter 2, n. 85, above.

[10] Complaints of amirs about low grain prices because of the reduced revenue it gave them will be discussed in Chapter 7.

those present to reduce this to 30,000, and then al-Ṭanbadī was dismissed from the position of *muḥtasib*.[11] Al-Ṭanbadī's career was not over, however, and he returned to the position in 792/1390 to serve for about a year.[12] After his second term as *muḥtasib*, he became an assistant judge.[13] It is not clear whether he ever paid the reduced amount of 30,000 *dirham*s, or even whether he gained any financial benefit from the income the scholars might have received from the merchants for the prayer instruction.

The merchants' reactions to al-Ṭanbadī's enforcement of religious education were not reported by the chroniclers, but it is reasonable to conclude that at least some did not want to part with two copper coins daily for being taught basic Quranic passages, something they should have known (and perhaps already did know). Indeed, some may have resented the *muḥtasib*'s meddling in their affairs and viewed the event as a mercenary attempt to extort money under the guise of enforcing legal doctrine. If revenue collection was the *muḥtasib*'s motive, the means were clever, since a merchant could not object without appearing to be negligent about prayer. Further, the *muḥtasib* did not impose these lessons on the population generally, but only upon those who presumably had the means to pay. Had a new tax been imposed on the merchants—perhaps called forthrightly a tax due to the *muḥtasib* for his regulatory services—the merchants might have protested, and, indeed, they did in exactly such a scenario that will be discussed in Chapter 9.

What is the meaning of this *muḥtasib*'s attempt to promote prayer? Should these actions be discounted, attributed to an opportunistic *muḥtasib*, or treated as corruption in the guise of piety? These questions lead to one of the fundamental themes of this book: human choices produce the lived experience of law. Proper prayer was agreed upon by the jurists as obligatory, but the *muḥtasib*'s attempt to connect this pillar of faith to revenue collection seemed forced and artificial, and hardly what one would expect the jurists had in mind when they elaborated the rules of prayer. Whether he was actually able to raise funds this way we are not told. In the next case, the same *muḥtasib* took a different approach to another matter related to prayer and established new rules in the unregulated space on the edges of doctrine.

Case 3.2. A longer call to prayer?

Two *muḥtasib*s in the Mamluk period influenced the call to prayer, but the background to these events begins with the Shi'i Fatimid period in Egypt, during which those who called Muslims to prayer, the muezzins, would ask for God's blessings for the Fatimid caliph after the dawn (*fajr*) call. When Ṣalāḥ al-Dīn (Saladin) re-established Sunnism in Egypt, this practice was dropped and the muezzins added the phrase "peace upon you, Messenger of God" before the dawn call to prayer each day. After his appointment to the position of *muḥtasib* of Cairo in 763/1361,

[11] Ibn al-Furāt, *Tārīkh*, 9:144. Al-Maqrīzī, *Kitāb al-Sulūk*, 3:661, reports only the dismissal.
[12] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:707, 748.
[13] Ibn Ḥajar al-'Asqalānī, *Inbā' al-ghumr*, 2:30.

al-Burulusī expanded the phrase to "blessing and peace upon you, Messenger of God." At the end of 765/mid-1364, al-Burulusī ordered the muezzins to say "peace upon you, Messenger of God, blessing and peace upon you, Messenger of God" after the call to evening prayer on Thursday night and before the dawn prayer daily.[14]

Then in 791/1389, prior to his dismissal that figured in the preceding case, Cairo's *muḥtasib* al-Ṭanbadī ordered that al-Burulusī's expanded phrase be recited a few times at the end of every call to prayer.[15] The reason for this was that a Sufi had heard the phrase one Thursday night and it pleased him and his companions. He asked them if they would like to hear this phrase with every call to prayer, and they said yes. He went to sleep and awoke excited, claiming that in his dreams the Prophet had ordered him to go to the *muḥtasib* with the message that the *muḥtasib* should order the muezzins to say blessings for the Prophet following every call to prayer. When the Sufi went to al-Ṭanbadī and told him what had happened, al-Ṭanbadī liked the idea and thus ordered it.[16]

After reporting these events, the historian al-Maqrīzī launched into a detailed and harsh critique of al-Ṭanbadī. According to al-Maqrīzī, al-Ṭanbadī was an ignorant man who conducted himself quite badly as *muḥtasib* and judge. He was not ashamed to take bribes and thought that being learned amounted to dressing like a jurist. He believed that God was pleased when he undertook to command right and forbid wrong and when he beat people. As a result, he was hauled before the sultan's *maẓālim* court a number of times. At the end of this tirade, al-Maqrīzī remarked that the Prophet did not order people to do anything after his death other than what God had revealed to humans through him, but al-Ṭanbadī apparently was ignorant of this fact.[17] Clearly, al-Maqrīzī was quite angered by the *muḥtasib*, whom he apparently saw as ultimately responsible for the additions to the call to prayer.

Although he reported the change in the call to prayer, the historian Ibn Taghrībirdī did not criticize al-Ṭanbadī. The historian Ibn al-Furāt recorded another version of the event without any criticism at all. In Ibn al-Furāt's very short version, it was the newly appointed *muḥtasib* of Fustat, Ibn al-ʿAllāf, who, a few days after his appointment, ordered the muezzins of mosques and *madrasa*s in Fustat to add such blessings upon the Prophet following every call to prayer except in the morning (when the phrase was already recited prior to the call). Al-Ṭanbadī then ordered the same for Cairo.[18] Ibn al-ʿAllāf served as *muḥtasib* in Fustat very briefly—one month—from Rajab to Shaʿbān in the year 791/June–July 1389.[19]

[14] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:94; al-Maqrīzī, *al-Khiṭaṭ*, 4:85.

[15] Except at the end of the call to the evening (*maghrib*) prayer. Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 11:331.

[16] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:639; al-Maqrīzī, *al-Khiṭaṭ*, 4:87–88. Ibn Taghrībirdī reported the events as taking place in 790/1388. Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 11:331.

[17] Al-Maqrīzī, *al-Khiṭaṭ*, 4:87, contains the long list of critical phrases; in *Kitāb al-Sulūk*, 3:639, he is briefly described as in a state of the utmost ignorance.

[18] Ibn al-Furāt, *Tārīkh*, 9:114.

[19] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:639, 649. Early in his career, Ibn al-ʿAllāf instructed children in Fustat and was a reader of the Quran. Then he traveled to Aleppo, where he met the amir Yalbughā. Ibn al-Ṣayrafī, *Nuzhat al-nufūs*, 1:232; al-Maqrīzī, *Kitāb al-Sulūk*, 3:639; Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ*

The three *muḥtasib* manuals contain nearly identical sections on the supervision of muezzins. They cover the necessary qualifications of the muezzin, the specific knowledge he should possess, and how he should behave while performing his task. The muezzin must be Muslim, male, honorable, reliable, and mentally competent. The *muḥtasib* should examine his knowledge of prayer times, because if he calls Muslims at the wrong time and they pray accordingly, he causes their prayers to be invalid. The *muḥtasib* should forbid him from excessively stretching out the words or singing. The muezzin is expected to know the doctrinal chapter (typically called *al-adhān wa-l-iqāma*) relevant to his work.[20] Such chapters include the qualifications for the muezzin and the content and style of the call to prayer.

In his chapter on the *muḥtasib* in *al-Aḥkām al-sulṭāniyya*, al-Māwardī wrote that human obligations to God include the call to prayer; however, if the *muḥtasib* disagrees with the way the call to prayer is made, he may not enforce his opinion if there is a view that approves of the call.[21] Al-Māwardī's point is significant: if a juridical view accepts the way the call is made, it is thus not wrong and the *muḥtasib* may not interfere. The *muḥtasib* may not impose his own view or a view of his choosing because that would amount to replacing a practice that was approved by at least some jurists with a rule that also only had some support. Thus, the existing practice is to be given substantial deference.

The Sunni call to prayer consists of seven phrases: (1) God is most great; (2) I testify that there is no god other than God; (3) I testify that Muḥammad is the Messenger of God; (4) Come to prayer! (5) Come to salvation! (6) God is most great; (7) There is no god other than God. Most phrases are repeated, generally twice, although the number of repetitions differs among the schools of law. In the call to the dawn prayer, the phrase "prayer is better than sleep" is recited twice. There is no evidence in the chronicles to suggest that the call was done improperly at the time that al-Ṭanbadī got involved with it. So even if regulation of the muezzin was within the *muḥtasib*'s jurisdiction, what was he doing in this particular case and on what legal basis?

The issue in this case was the language that the muezzin was expected to insert *after* the formal call to prayer. This was an area for which the jurists had not elaborated rules; their discussions only covered the call itself (and its repetition made inside the mosque immediately before prayer, the *iqāma*). If what the muezzins said aside from the call was doctrinally unregulated, why did al-Maqrīzī object? To some extent, he was criticizing the *muḥtasib*'s lack of professional qualifications as much as his particular actions, although the reports of the historians Ibn al-Furāt and Ibn Taghrībirdī show that hostility to this particular *muḥtasib* was not universal. Al-Maqrīzī's report also contained an implicit criticism of the unnamed Sufi whose frivolous actions, as they were described, prompted the

al-ghumr, 1:371. They returned to Egypt together, and he was later appointed *muḥtasib*. Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:371.

[20] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 176; al-Shayzarī, *Nihāyat al-rutba*, 111; Ibn Bassām, *Nihāyat al-rutba*, 176.

[21] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 305.

change. Al-Maqrīzī did not appear to take a negative attitude towards Sufis generally, although in this case he was critical of the idea of adding to the call and in particular of this *muḥtasib*'s willingness to take up the Sufi's suggestion.

In addition to criticizing the personalities involved, al-Maqrīzī added a further note about the addition to the call to prayer. In doing so, he gave a sense of his own doctrinal views, which were generally resistant to changes that deviated from the practice of the earliest Muslim community. He complained that the language added to the call was a negative innovation (*bidʿa*) that persisted into his time in both Egypt and Syria. Because this negative innovation latched on to the very proper and accurate call, people developed the mistaken idea that this extra language was an integral part of the call to prayer and could not be abandoned.[22] *Bidʿa* refers to a belief or practice that was not held or carried out in the time of the Prophet. Jurists considered some such innovations beneficial (*bidʿa ḥasana*), while others, as al-Maqrīzī claimed was the case here, were negative or blameworthy.[23] The fact that the additional language continued to be recited in at least some mosques, from the time of the event in 791/1389 to the time of the completion of al-Maqrīzī's books (which, in the case of *al-Khiṭaṭ*, was near the end of his life in 845/1442),[24] suggests that there was not sufficient interest or ability to stop it, even if some might have considered it a negative *bidʿa*.[25]

Aside from these juristic details, did the average person hearing the call and going to prayer even notice the change, or know who made it and why it was made? There is no evidence to answer these questions satisfactorily—it may, indeed, have been the case that this addition to the call was controversial and widely discussed in public circles at that time. The public may have talked about this creation of al-Ṭanbadī (or al-Burulusī or Ibn al-ʿAllāf), debated his authority, and even criticized him personally. Or, Muslims may simply have heard the result without knowing the details of the decision. They may have assumed, as al-Maqrīzī claimed, that the extra language had become part of the call and was legitimated as a doctrinal matter. Given that the historical reports conflict, it is possible that the additional language began in Fustat and Cairo without much clarity as to why and at whose hands.

How much of an intrusion on an individual's devotional practice was this new language? It was terribly offensive for al-Maqrīzī, but was it a problem for someone who was not learned in the legal topic of innovation? Perhaps the *muḥtasib*s' acts in instructing the muezzins were minor in the bigger picture of all of the *muḥtasib*s' activities, and the fact that little was known, let alone widely reported in the chronicles, suggests that the impact of what they did in this case was trivial. But putting aside al-Maqrīzī's attacks on the individuals involved, he does seem to have identified a core

[22] Al-Maqrīzī, *al-Khiṭaṭ*, 4:87–88.

[23] On the concept of *bidʿa*, see Raquel Ukeles, "Innovation or Deviation."

[24] Broadbridge, "Academic Rivalry and the Patronage System in Fifteenth-Century Egypt," 100.

[25] Subsequently, scholars have largely accepted the addition, with some opposition, and a contemporary debate about the practice continues today. See, for example, the discussion in "Adhān," *al-Mawsūʿa al-fiqhiyya*, 2:361–362. The Egyptian author al-Qalyūbī, writing in the seventeenth century, reported al-Ṭanbadī's actions descriptively (and identified him as responsible) and specified that the additional language was used at the time that he wrote his commentary. Al-Qalyūbī, *Qalyūbī wa-ʿUmayra*, 1:131.

problem when he noted that the new language became entangled with the pre-existing call and people could no longer discern what was doctrinally required and what was added at the discretion of an official. The overall effect initially seems relatively small, but on a more fundamental level, the case raises the significant question of how much the average Muslim was entitled to know—and be told—about her religion and its requirements. The next case further explores this same topic.

Case 3.3. The preacher, the *muḥtasib*, and the judge

At the end of 781/1380, at a time when the amir Barqūq was effectively acting as sultan but had not yet taken formal control, the Cairo *muḥtasib* Jamāl al-Dīn al-ʿAjamī objected to the content of a preacher's sermons. Specifically, the *muḥtasib* took issue with Shaykh Zayn al-Dīn ʿUmar b. Muslim al-Qurashī, who had come from Damascus and worked as preacher (*wāʿiẓ*) at the al-Azhar mosque. Some people complained to the *muḥtasib* that Shaykh Zayn al-Dīn was reciting *ḥadīth*s that discussed divine attributes (*ṣifāt*).[26] The *muḥtasib* Jamāl al-Dīn responded by detaining the shaykh and his son for several days.[27] The chief Shāfiʿī judge, Ibn Jamāʿa, came to the shaykh's aid and told the *muḥtasib* to release him and not to interfere with his activities.[28]

Ibn al-Ukhuwwa's manual contains a separate chapter on the regulation of preachers (*wuʿāẓ*).[29] The *muḥtasib* is instructed to oversee them, which includes examining them and only allowing those whose religious knowledge is firmly established to preach from the pulpit. The preacher must be well known for his religiosity and virtue; knowledgeable in the legal and literary sciences; and able to recite from memory the Quran and some *ḥadīth*s and recount tales of early Muslims.[30] Those with only some knowledge in these areas and who have memorized some *ḥadīth*s and a few stories of the early Muslims are also permitted to preach, but not from the pulpit.[31] This manual gives the *muḥtasib* authority to test those who want to act as preachers, implying that the *muḥtasib* may intervene to stop a preacher who he believes falls short of the criteria for the position. The action taken by the *muḥtasib* here seems to be contemplated by Ibn al-Ukhuwwa's manual, although the approach was heavy-handed. Jamāl al-Dīn did not ask the shaykh to alter his sermons, or even prohibit him from preaching. Rather, he held the shaykh along with his son in some kind of detention.

But what was the underlying problem here with discussing God's attributes? The issue relates to a fierce theological debate, still actively discussed in the Mamluk period, between two main positions, traditionalism and rationalism, and a middle ground that developed between the two, which has been attributed to al-Ashʿarī (d. 935–6) and his followers. Quranic verses that discuss God's attributes include

[26] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:370; Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:197.
[27] The historian Ibn Ḥajar al-ʿAsqalānī specified that the shaykh was detained for six months before being released. Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:197.
[28] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:370; Ibn Qāḍī Shuhba, *Tārīkh*, 3:11.
[29] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 179–182.
[30] Ibid., 179. [31] Ibid., 180.

references to God on a throne (Q 20:5 and others), the hand of God (Q 48:10 and others), and the face of God (Q 55:27 and others). Traditionalist theologians tended to take such verses literally, and their rationalist opponents accused them of giving God bodily attributes and of promoting anthropomorphism thereby. For Muʿtazilite rationalists, the divine attributes were explained by metaphorical interpretation, so that God's hands and face would be interpreted not literally but rather to mean God's grace and essence, for example. What has been called the "orthodox middle road" of Ashʿarism developed, which tended to accept God's attributes on their own, rejecting anthropomorphism and even resorting to metaphorical interpretation, albeit to a lesser degree than the Muʿtazilites.[32]

This case involved not a discussion among theologians, however, but rather a preacher in a large mosque in Cairo reciting *ḥadīth*s that mentioned God's attributes. While some attributes of God are specifically mentioned in the Quran, many more are referred to in the *ḥadīth*, creating even more opportunities for possible misunderstanding.[33] Further, the composition of the audience and the type of person presenting the information seemed to be relevant facts. The Shāfiʿī jurist al-Subkī (d. 1370), who was an ardent Ashʿarī and opposed anthropomorphism, also expressed concern about *ḥadīth*s of God's attributes being discussed outside the circles of experts.[34] In his short book exhorting the holders of trades and professions to good behavior, he specified that the storyteller (*qāṣṣ*) must mention only that which average people (*ʿāmma*) can understand and relate to, such as encouraging prayer, fasting, and paying *zakāt*.[35] Al-Subkī defined the storyteller as someone who sits in the streets reciting Quran, *ḥadīth*, and stories of the early Muslims.[36] The storyteller should not discuss theology (*uṣūl al-dīn*) or *ḥadīth*s about God's attributes, all of which will cause theological misunderstandings.[37]

In the short section on the preacher (*wāʿiẓ*), however, al-Subkī did not mention any limitations on the content of the sermons, with the implication that the typical storyteller in the street is generally less learned than the preacher in the mosque and might misstate important issues, such as God's attributes. Further, people who sit and listen to the storyteller in the street might be more likely than those who attend sermons in the mosque to draw mistaken conclusions from discussions of God's attributes and therefore be misled more easily. Thus, even though al-Subkī was not concerned himself about preachers speaking about *ḥadīth*s of God's attributes, his implicit comparison between preachers and storytellers is helpful for suggesting that both the qualifications of the presenter and the composition of the audience are relevant to determining what topics may be covered. He also indicated that the

[32] Makdisi, "Ashʿarī and the Ashʿarites in Islamic Religious History I," 51–52.
[33] See Gimaret, *Dieu à l'image de l'homme*, 9–12.
[34] Makdisi, "Ashʿarī and the Ashʿarites in Islamic Religious History I," 57–60.
[35] Al-Subkī, *Muʿīd al-niʿam*, 113.
[36] Ibid. Berkey concluded, however, that the three types of preachers that al-Subkī identified (*wāʿiẓ*, *qāṣṣ*, and *qāriʾ al-kursī*), in addition to the preacher at the Friday congregational sermon (*khaṭīb*, whose task seems defined), were difficult to distinguish from one another. Berkey, *Popular Preaching and Religious Authority in the Medieval Islamic Near East*, 13.
[37] Al-Subkī, *Muʿīd al-niʿam*, 113.

appropriate content of a preacher's sermon was a matter about which there could be disagreement.

In the case here, Shaykh Zayn al-Dīn was preaching at one of the most prestigious and important mosques in Cairo, al-Azhar, and those present might have included at least some who were not familiar with theological debates about God's attributes. But the shaykh was no mere storyteller. He was a Shāfiʿī scholar from Damascus who had studied *fiqh*, was skilled in Quranic commentary, had memorized many *ḥadīth*s, and was known for the power of his memory. Biographers mentioned that he was famous for commanding right and forbidding wrong, not as a *muḥtasib* but on his own, seemingly out of his individual sense of duty. Zayn al-Dīn had a good reputation and was known for having the courage to confront anyone, important or not, with the truth.[38]

The shaykh's story did not end with his detention. The chief judge was able to override the *muḥtasib*'s decision and get Zayn al-Dīn and his son released. Burhān al-Dīn b. Jamāʿa served as chief Shāfiʿī judge in Egypt twice, and at the time of this event he was in his second term. He later became the chief judge of Damascus and died in office in 790/1388. He was the grandson of former Egyptian chief Shāfiʿī judge Badr al-Dīn b. Jamāʿa (d. 733/1333).[39] There is no evidence of a personal friendship between the chief judge and the preacher, or even of prior acquaintance.[40] Perhaps it was a case of one Shāfiʿī scholar helping out another, or perhaps Burhān al-Dīn thought that the *muḥtasib* had overstepped the bounds of his jurisdiction.[41] The *muḥtasib*, Jamāl al-Dīn, who was a Ḥanafī, is an example of someone whose connections with the ruling elite were key to his appointment. It is impossible to know whether he had a personal position on the issue of God's attributes or whether he might have been acting on someone else's instructions. The chief judge might also have thought that the *muḥtasib* was substantively incorrect in stopping a preacher when there was no juristic consensus over how to use and understand God's attributes.

The event began here with an unknown person or people complaining to the *muḥtasib* about the shaykh's sermons and his use of *ḥadīth* in particular. In most of the cases discussed in this book, the *muḥtasib* took notice of a problem himself, or he was directed to a problem by the sultan or an amir. This raises an important question about the ability and inclination of people to turn to the *muḥtasib* to attend to

[38] Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 3:271–272; Ibn Qāḍī Shuhba, *Tārīkh*, 3:359–360; Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:405–406; Ibn al-ʿImād, *Shadharāt al-dhahab*, 6:323–324.

[39] Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 1:39–40.

[40] They would have several additional encounters subsequent to this event, most of which had negative outcomes for Zayn al-Dīn and his son. Wiederhold, "Legal-Religious Elite, Temporal Authority, and the Caliphate in Mamluk Society," 216–218. Zayn al-Dīn later got caught up in the rivalry between Minṭāsh and Barqūq, and when Barqūq became sultan, he arrested Zayn al-Dīn and his son and held them in the Citadel of Damascus. Zayn al-Dīn's property was confiscated and he had to pawn the many books that he had collected. Zayn al-Dīn died while under arrest in the Citadel in 1390. Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 3:271–272; Wiederhold, "Legal-Religious Elite, Temporal Authority, and the Caliphate in Mamluk Society," 218.

[41] The former is Lutz Wiederhold's speculation. Wiederhold, "Legal-Religious Elite, Temporal Authority, and the Caliphate in Mamluk Society," 217.

problems they identified, or perhaps to entangle the official in personal disputes. The *muḥtasib*'s jurisdiction was limited to acts or omissions that were manifest, that is, public; what occurred in private was not his concern, except in special cases.[42] But the *muḥtasib* might not encounter an act on his own and could easily remain unaware unless someone reported it to him. The motivations of the unidentified complainants were not noted. Did they have a particular concern with God's attributes and make it a point to listen to sermons and report offenders, in their eyes, to the *muḥtasib*, hoping to secure his help in stopping their opponents? Or was this due to an individual who on this one occasion happened to find a sermon troubling?

This case involves a *muḥtasib* acting in an area that the manuals put within his jurisdiction with the result, as in the previous case, of influencing what the average Muslim was exposed to in his daily religious life. From the perspective of a person who wanted to pray in al-Azhar mosque and hear a sermon, how did it affect him to be denied the opportunity to learn about some of the attributes of God? The significance of access to this information is unclear; how people's understanding of their religion might change through contemplation of attributes of God is difficult to measure. But the case does make the larger point that officials—preachers, *muḥtasib*s, or even the sultan—had a significant role in determining what information people received. For those not learned enough to read religious texts themselves, knowledge about their religion depended heavily on others, including preachers, reciters, and storytellers, and what these figures chose to say, and the examples they used to illustrate their message, could have profound effects on widespread understandings of Islam. In the next case, the *muḥtasib*'s actions do not involve preventing information but rather something far more assertive: ordering that people fast and pray in a specific and unusual context.

Case 3.4. Prayer and fasting for plague relief

A plague in 822/1419 set the background for a series of announcements by the *muḥtasib* that form the basis for this case.[43] When Ṣadr al-Dīn b. al-ʿAjamī became

[42] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 324; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 37–38. This point is discussed in more detail in Chapter 4.

[43] Many recurrences of plague took place subsequent to the official "Black Death" that traveled westward across Eurasia in the middle of the fourteenth century, and this was one such recurrence. Dols, *The Black Death in the Middle East*, 3–4, 248–250, 310. A short time after this case, the *muḥtasib* issued an order that may also have been prompted by the plague. He forbade women from passing through the al-Ḥākim mosque and demanded that all people stop walking in it while wearing their shoes. They complied with his order, and the mosque became cleansed of the wrongful acts that had been taking place in it between men and women and of the games that children were playing in it. Al-Maqrīzī, *Kitāb al-Sulūk*, 4:511. This event combines some elements of devotional practice, since removing one's shoes before entering a mosque is a basic initial step before praying in the mosque, and some elements of crimes and offenses, the topic of the following chapter, in the allegation that unlawful acts were happening between men and women in the mosque. The reason why people may have used this mosque for passage as well as prayer relates to its location at the northern edge of Cairo, just south of and right between the two northern gates. Passage through the mosque provides a shortcut from Bāb al-Nāṣr to the main market thoroughfare. See Map 2.1.

muḥtasib of Cairo, replacing Ibn Shaʿbān, deaths from the plague had begun to subside in outlying parts of Egypt but to increase in Cairo and Fustat.[44] In one of his first actions, Ibn al-ʿAjamī raided places of vice (discussed in the next chapter), and issued rules on the behavior of Christians and Jews (treated in Chapter 5). Then he announced on a Thursday that people should fast on Tuesday, Wednesday, and Thursday of the following week, and on Friday go to the desert with Sultan al-Muʾayyad Shaykh to ask God to lift the plague. The *muḥtasib* repeated the call on the Monday before he wanted people to begin fasting, and on that day the number of deaths decreased. After two days of fasting, many merchants experienced a dip in sales, just as at the start of the month of Ramadan. On the third day of fasting, the *muḥtasib* reminded the people that the next day they should go out into the desert to pray for the lifting of the plague. Everyone was supposed to go, including the jurists and Sufi shaykhs.[45]

On that Friday, the sultan prayed at dawn and then rode out from the Citadel, wearing wool and a small turban and displaying humility in dress and behavior. The sultan rode on his horse, which was dressed in plain cloth rather than the usual silk and gold. Most of the scholars went out, too, some riding and some walking, heading out of Cairo apparently through the eastern gates. Once outside Cairo's walls, the sultan dismounted and, surrounded by jurists and in the presence of the caliph, spread out his hands and appealed to God, while crying and wailing. Then he rode to the enclosed area around the tomb of Sultan Barqūq, with the people crowding around him. He sacrificed many animals, some with his own hands, including 150 male sheep, ten cows, two water buffalo, and two camels. The sultan left the slaughtered animals lying on their sides and returned to the Citadel, leaving others to distribute them to the major mosques and Sufi institutions. Some were divided up on the spot and the meat given to the poor. The sultan also distributed 28,000 loaves of bread.[46]

Prayer and fasting, two of the main activities in this case, are certainly core acts of devotional practice, and jurists wrote in great detail about the different types of prayer and the details of fasting. As discussed above, the obligatory prayers take place five times a day, with a communal Friday noon prayer. Special prayers can also be made at certain times of the year, including the end of Ramadan, the Holiday of Sacrifice (*ʿīd al-aḍḥā*), and solar eclipses.[47] One special kind of prayer, for rain, relates to this event and is discussed below. Likewise, fasting during the month of Ramadan is an agreed-upon obligation, and the jurists also held views on voluntary fasting on other days. Many agreed, for example, on the permissibility of fasting on a particular day during the month of Muḥarram, and agreed that

[44] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:480–481.

[45] Ibid., 4:487; Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 4:78.

[46] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:488–489. Adam Sabra recounts this story with an emphasis on the food that the sultan provided. Sabra, *Poverty and Charity in Medieval Islam*, 55–56.

[47] Earlier that same year, this *muḥtasib* sent out his assistants into the market to call people to a prayer for a solar eclipse and al-Maqrīzī praised him for it. Al-Maqrīzī, *Kitāb al-Sulūk*, 4:482. The jurists noted that the solar eclipse prayer was practiced by the Prophet and agreed that it should be undertaken in a congregation. See Ibn Rushd, *Bidāyat al-mujtahid*, 1:381.

fasting on the Holiday of Sacrifice is prohibited. Some disapproved of fasting on Fridays.[48]

Although the *muḥtasib* manuals deal with Friday prayer, they do not discuss any of the other prayers nor fasting. This does not mean, however, that the enforcement of fasting was not in the jurisdiction of the *muḥtasib*. Al-Māwardī in his chapter on the *muḥtasib* discussed fasting to make a point about the evidence the *muḥtasib* needs in order to act. If the *muḥtasib* sees a man eating in the daytime during Ramadan, he should ask the reason before taking any action, since there may be extenuating circumstances.[49] In our case, however, the *muḥtasib* added a new fast at the sultan's request.

The historian al-Maqrīzī was typically critical of practices that he regarded as deviating from past precedent, as already seen in his response to the additions to the call to prayer in Case 3.2, and he added a sizable commentary to the end of his description of the fasting and praying undertaken for plague relief, beginning with the statement that it contradicted the practice of the pious forefathers (*al-salaf al-ṣāliḥ*). He related that when a plague afflicted the Syrian town of ʿAmwās in the early years of Islam (in 638 or 639),[50] the commander of the Muslim armies in Syria, Abū ʿUbayda b. al-Jarrāḥ, a companion of the Prophet, preached to the people and said: "This pain is [an occasion for] the mercy of your God and [a case of] what your Prophet summoned you to. This is how the pious have died. O God, give us our part of it!" The plague afflicted him and he died. Then his successor, Muʿādh b. Jabal, stood up and preached the same thing, asking God to bring to his family their part of the plague. His son died and then Muʿādh, too, died. Then ʿAmr b. al-ʿĀṣ was appointed his successor, and he related to the public the events of how the people in Syria responded to the plague. After this version of the forefathers' stand in the teeth of the ʿAmwās plague, al-Maqrīzī commented that in his day people were doing just the opposite, asking God to lift the plague from them.[51]

Jurists differed on the permissibility of supplicating for relief from a plague. In general, the Ḥanbalīs and some Shāfiʿīs rejected the idea of showing obedience and humility before God (*qunūt*) in an effort to lift the plague, due to the example of the plague of ʿAmwās, as discussed above.[52] The Mamluk-era Shāfiʿī jurist Ibn Ḥajar al-ʿAsqalānī wrote a treatise on the plague in which he emphasized a Shāfiʿī view that permitted individual or group supplication to end a plague, and he

[48] Ibn Rushd, *Bidāyat al-mujtahid*, 1:571–575.

[49] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 308–309.

[50] Dols, *The Black Death in the Middle East*, 21.

[51] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:489–490. For purposes here, what is significant is al-Maqrīzī's understanding and presentation of this story, and not its historical accuracy. For a discussion of the plague of ʿAmwās, see Dols, *The Black Death in the Middle East*, 21–25; van Ess, "Texts and Contexts"; and van Ess's more extensive *Der Fehltritt des Gelehrten*.

[52] For Ḥanbalī views, see al-Buhūtī, *Kashshāf al-qināʿ*, 1:397; al-Mardāwī, *al-Inṣāf*, 2:174–176. For Shāfiʿī views, see al-Ramlī, *Nihāyat al-muḥtāj*, 1:508–509. See generally "Ṭāʿūn," *al-Mawsūʿa al-fiqhiyya*, 28:329–333. Those who rejected supplication for plague relief due to the example of ʿAmwās consider plague to be a specific form of disaster for which the general rules allowing supplication do not apply. There is no agreement among modern scholars on the meaning of the Quranic term *qunūt* (or derivatives from the same root), but the context here indicates that it means showing obedience and humility before God, particularly in conjunction with prayer. *EI*^{2}, s.v. "Ḳunūt" (Wensinck).

suggested that people read a specific Quranic verse in their homes for three consecutive nights to prevent the plague from entering.[53] The Mālikīs in particular approved of prayer in an effort to lift a plague, and some Mālikī scholars specified that the plagues were punishment for a society that allows fornication (*zinā*).[54] Those who approved of *qunūt* in an effort to lift a plague said that it should be done by a supplication to God at some point in a formal prayer.[55]

In the case presented here, the sultan did not lead a regular community prayer, but rather a wide-scale supplication to God. Even those scholars who allowed or encouraged individuals to pray for plague relief did not seem to contemplate a prayer spectacle as elaborate as this one.[56] The sultan did not create this event wholesale, however, but replicated the behavior of the permissible supplication for rain. Based on Prophetic practice, the supplication for rain (*istisqā'*, lit. "seeking water") is a communal event recognized by most scholars, which takes place in open air and in ordinary clothing.[57] When the Prophet performed it, he guided people to an open area, faced the direction of the Kaʿba, led them in formal prayer (according to most jurists), made a supplication for rain, turned his cloak inside out, and raised his hands.[58] In terms of fasting, the scholars generally recommended that Muslims be commanded to fast for three days prior to the prayer for rain.[59]

Thus, the sultan's actions in this case combined the idea of praying for plague relief, as to the permissibility of which the jurists disagreed, and the public supplication for rain, which was generally accepted. But if jurists disagreed about the permissibility of supplication for plague relief, why was the *muḥtasib* enforcing it? Did this *muḥtasib*, Ibn al-ʿAjamī, know about the disagreement? He was one of the last *muḥtasib*s of the Mamluk period who could be considered a jurist, even though he was also a boon companion of Sultan al-Muʾayyad Shaykh. His studies of Ḥanafī law even won him the praise of al-Maqrīzī.[60] These biographical details suggest that he might have known about the juristic disagreements.

Significantly, however, supplicating for plague relief does not seem to have been the *muḥtasib*'s own idea; he was carrying out orders from the sultan or acting in conjunction with him. For the sultan, these events served many important functions. He directed the people's suffering into performing these acts, in the hope that God would lift the plague if they showed their devotion by fasting and praying. The

[53] Ibn Ḥajar al-ʿAsqalānī, *Badhl al-māʿūn*, 316.
[54] Al-Dasūqī, *Ḥāshiyat al-Dasūqī*, 1:308.
[55] See "Qunūt," *al-Mawsūʿa al-fiqhiyya*, 34:57–68.
[56] See al-Dasūqī, *Ḥāshiyat al-Dasūqī*, 1:308.
[57] Ibn Rushd, *Bidāyat al-mujtahid*, 1:389.
[58] Ibid., 1:390–393. The main disagreement is over whether formal communal prayer is part of the supplication for rain, due to a conflict among the *ḥadīth*s, some of which involve the Prophet formally praying two *rakʿa*s as part of the supplication and some of which only discuss the supplication but not the formal prayer. Abū Ḥanīfa believed that the formal communal prayer itself was not part of a supplication for rain. Al-Bābartī, *al-ʿInāya sharḥ al-Hidāya*, 1:470.
[59] Al-Nawawī, *Kitāb al-Majmūʿ*, 5:53, 61–62; al-Ramlī, *Nihāyat al-muḥtāj*, 2:414–415; al-Bābartī, *al-ʿInāya sharḥ al-Hidāya*, 1:473; al-Dasūqī, *Ḥāshiyat al-Dasūqī*, 1:406; al-Buhūtī, *Kashshāf al-qināʿ*, 1:541.
[60] His biography is discussed in Chapter 2.

dramatic scene showed the population that he was doing everything in his power to seek God's mercy and to alleviate the immediate needs of the people by providing food, while slaughtering some of the animals himself would have added to the image that the sultan was personally improving the situation. The sultan was accompanied not only by the *muḥtasib*, but also by judges, prominent jurists, and the caliph. This is one of the few events in this book where the caliph makes an appearance. Typically, throughout the Mamluk period, the sultan kept the caliph relatively secluded, and the task of the caliph was mainly to recognize each new sultan.[61] Bringing out the caliph was a powerful and perhaps reassuring sign to the population that all the powers of the sultanate were beseeching God to lift the plague.

The tangible results of the sultan's and *muḥtasib*'s actions here had a significant impact upon the people who were compelled to participate. If they believed that supplication of this type was impermissible, did they still have to go to the desert and participate? Could they discuss their doctrinal concerns with the sultan or the *muḥtasib*? Both are unlikely. Even al-Maqrīzī, whose opposition to this event would have made him take particular notice of those who refused to participate, had no public dissent to report. At the same time, the sultan provided food to the city in conjunction with the supplication, something no one would object to. The event combined two different aspects of sultanic power—providing essential food to the population and leading prayer—to produce a result uniquely crafted for a difficult situation. As a result, the jurists may have been the ones to articulate rules of prayer and fasting, but they had to share their authority with the sultan in this case and had little opportunity to voice reservations or opposition in the face of a major public crisis that the sultan was determined to resolve in his own way.

Conclusions

In the four cases discussed in this chapter, the *muḥtasib* took a range of actions that affected the personal devotional lives of Muslims. By imposing prayer lessons, he attempted to command an agreed-upon aspect of doctrine, since prayer, and its correct execution, are fundamental practices in Islam. Yet the means of achieving this end was at the discretion of the *muḥtasib*; nothing in the doctrinal rules of prayer indicates how someone is to be taught how to pray. The fourth case, dealing with fasting and prayer for plague relief, also imposed actions on the population during several days of activities. The sultan was the key actor and the *muḥtasib*'s role was to assist in compelling people to participate. Yet here, jurists disagreed on whether people caught in a plague-infested area should pray for relief. It is conceivable that some may have refused to participate on doctrinal grounds, although there is no report about such resistance.

[61] Little, "Religion Under the Mamluks," 173.

The cases of the call to prayer and restraint of the preacher form a pair of events of a different kind. Both involve the control of devotional information by the *muḥtasib*, whose actions depended heavily on his discretionary choices. In the former, he operated on the margins of doctrine, not intruding upon any particular rule of the call to prayer but rather functionally adding to it so that people began to confuse his additions with the call itself as it had been made. In the latter, the official's efforts to stop the preaching might have had the support of some jurists, although certainly not all. Here, he faced more than just a complaint by a historian in response; the chief judge stepped in and secured the preacher's release. The judge's actions were the only example in this chapter of clear resistance to the *muḥtasib*'s actions, and it was a successful effort.

These cases clearly show that the *muḥtasib* did not merely enforce agreed-upon doctrinal rules. From the perspective of the people involved, more was demanded of them by the *muḥtasib* than just abiding by ritual rules with which they were all familiar. Rather, new aspects of devotional practice were brought to them by the *muḥtasib*, who also influenced what information people received about their religion and what they heard at the time of the call to prayer. In doing so, the *muḥtasib*s may have been influenced by the specific personal need to raise funds and surely were affected by the goal of relieving the devastating effects of a plague. As a result, devotional life was not just a private (and predictable) relationship between a Muslim and God, and it was not even confined to the Muslim and the scholar he or she sought out for advice—the *muḥtasib* and the sultan both drew upon a fair amount of discretion and acted in this area, too.

4

Serious crimes or minor offenses?

In this chapter, the *muḥtasib* deals with people who gamble, sell and imbibe intoxicants, offer and solicit prostitution, and mingle with members of the opposite sex in public. Legal doctrine dealt explicitly with all of the offenses discussed here, especially when they constituted elements of *ḥadd* crimes. The sultan and his administration also took an interest in this behavior from their own perspective so that the cases of this chapter show regulation by a blend of the two sources of authority of *fiqh* and *siyāsa*.

In addition, the *muḥtasib* drew upon his sense of professional discretion and personal opinion when dealing with these matters. Discretionary punishment (*taʿzīr*) figures prominently in the *muḥtasib*'s actions and served alongside the other two main bases of punishment—*ḥadd* crimes and policy-based punishment (punishment *siyāsatan*)—to show the full range of headings under which an official might punish a wrongdoer. These cases show the *muḥtasib* avoiding the pursuit of prosecutions of *ḥadd* crimes, which would have required judicial adjudication, in favor of treating wrongful acts under the heading of *taʿzīr*. They also show attempts by the people to resist by strategically refusing to comply with the *muḥtasib*'s rules.

Case 4.1. Gambling with eggs

A simple story about a game with eggs illustrates significant themes of law and society. The holiday of Covenant Thursday, or Maundy Thursday, on the Thursday before Easter, involved the tradition of coloring eggs. In his topography, al-Maqrīzī noted that during this holiday these eggs were sold in the markets in Cairo and Fustat and young boys would gamble with them. The *muḥtasib* would sometimes send someone to stop them.[1] Al-Maqrīzī did not explain what the game involved, but other sources fill in this gap. The eggs were hard boiled, and one player would use his egg to hit his opponent's in order to break it. If he was able to break the other egg while keeping his own intact, he won the broken egg, which he could eat or sell.[2]

The *muḥtasib* manuals specifically mention gambling with eggs. Al-Shayzarī's chapter "Educators of Boys" tells the *muḥtasib* how to supervise teachers, who were

[1] Al-Maqrīzī, *al-Khiṭaṭ*, 1:720. Specifically, he reported that boys, slaves, and the "riffraff" would play this game.

[2] Rosenthal, *Gambling in Islam*, 61–62.

responsible for the children in their care. The teacher is instructed to beat boys who are ill-mannered, use bad language, and take part in illegal activities, such as playing with dice and eggs, playing backgammon, and engaging in other kinds of gambling (*qimār*).[3] The manuals of Ibn al-Ukhuwwa and Ibn Bassām contain similar provisions.[4] It is not surprising that this discussion is located in the chapter on instruction of children, since these instructors were best positioned to monitor what children do outside the home. In this case, the boys seem to have been playing their egg games in the street.

As for gambling, the Quran condemns "*maysir*": "O you who have attained to faith! *Khamr*, *maysir*, idolatrous practices, and the divining of the future are but a loathsome evil of Satan's doing; shun it, then, so that you might attain a happy state!"[5] *Maysir* is generally translated as "games of chance," and the verse is understood to prohibit them. But what are games of chance? Many jurists divided games of chance into two types: the *maysir* of play (*lahw*), in which no property is at stake in the game, and the *maysir* of gambling (*qimār*), which involves the risk of loss of property. The scholars agreed that *maysir* of gambling is prohibited. As for *maysir* of play, which includes chess and backgammon so long as no money is wagered, the scholars disagreed. If the game distracts from an obligatory act, like prayer, then it is prohibited. Otherwise, views on the *maysir* of play ranged from permissible to forbidden.[6] In the egg game, the loser forfeits his egg, which brings it under the heading of *maysir* of gambling, although few jurists mentioned this game specifically in their discussions.[7]

What should the *muḥtasib* do when he encounters a game in progress? Unlike wine consumption (as will be seen below), scholars did not consider participating in *maysir* activities to be a *ḥadd* crime. Even though the Quran identifies it as a wrongful act, no punishment for it is delineated in the Quran or *sunna*. Any punishment for *maysir* is thus considered discretionary, or *taʿzīr*, and authorities may punish it when and how they choose.[8] Possible punishments include seizing the gambling boy's eggs, physically punishing him, or giving him a light or stern warning. In the case of a repeat offender, a more aggressive approach may be warranted, such as severe physical punishment or public humiliation. In the report from al-Maqrīzī, the *muḥtasib* aimed at stopping the activity, so the boys may have

[3] Al-Shayzarī, *Nihāyat al-rutba*, 104.

[4] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 171; Ibn Bassām, *Nihāyat al-rutba*, 161.

[5] Q 5:90. Muhammad Asad (trans.), but I use the Arabic terms *khamr* and *maysir* rather than Asad's translations of "intoxicants" and "games of chance" in order to examine the meanings of these terms in the discussion that follows.

[6] "Maysir," *al-Mawsūʿa al-fiqhiyya*, 39:406–407. Al-Shāfiʿī further specified that the risk of property loss had to exist for both parties—not just one of them—in order for an activity to be considered gambling. Ibid.

[7] Jurists who did discuss the egg game include Ibn Abī Shayba, *al-Muṣannaf*, 7:588–589, who included four *ḥadīth*s on this topic, one of which seems to permit the playing with eggs; and Ibn Taymiyya, *al-Fatāwā al-kubrā*, 2:10, who specifically deemed the egg game prohibited. Children also played a game with walnuts. It seems that the walnuts were made smooth and played with like a game of marbles. The winner took the loser's walnuts, to play with or eat. Rosenthal, *Gambling in Islam*, 60.

[8] "Maysir," *al-Mawsūʿa al-fiqhiyya*, 39:408.

been told to cease their games and then the area was monitored to make sure they did not resume playing.

Al-Maqrīzī reported that the *muḥtasib* would sometimes send someone to prevent the boys from gambling with eggs.[9] The word "sometimes" highlights one of the most basic realities of law enforcement across all legal systems: choices must be made about finite resources and not every possible wrong can be monitored or caught at all times. In the years about which al-Maqrīzī was writing, different *muḥtasib*s apparently decided whether they would use their resources to patrol the streets for boys gambling with eggs on the Christian holiday before Easter. If he was not preoccupied with large problems, such as high bread prices, a *muḥtasib* might dispatch an assistant to the streets where boys were known to play, or even go himself. Perhaps the *muḥtasib*'s response depended on his personal disposition—was his pet peeve gambling boys? Did he have a soft spot in his heart for the games he played in his youth? The decision of when and how to deal with gambling boys is not a doctrinal matter—gambling is wrong according to most jurists, regardless of enforcement—but rather one of policy calculations.

The groups of boys, which may have included both Muslim and Christian youths, participated in and enjoyed the Easter week activities. Even if the boys were Christians, they were not permitted to violate the rules against gambling, regardless of what their own religion may have said about it. Implicit in al-Maqrīzī's report is that the threat that the *muḥtasib* might send someone to prevent them was not a sufficient deterrent; they persisted in playing with the eggs year after year. Indeed, the Egyptian Mamluk-era author Ibn al-Ḥājj, whose book contains complaints about many doctrinal infractions he determined to be taking place around him, bemoaned that children gambled on this holiday with these eggs without anyone stopping them.[10]

The significance of this example goes far beyond gaming with eggs. Both simple and profound, it shows that enforcement of law in Mamluk-era Egypt, as in other legal systems, had to respond to social and economic needs. Jurists developed rules for games of chance, debating and refining their points in their doctrine, but they did not discuss in any detail how the rules should be implemented by a legal official. The scholars hoped that all rights and wrongs would translate into social action. In practice, enforcers had to make decisions based on their own calculations, and inaction on the part of law enforcement does not mean that the law changed or that it was abandoned. Mass refusal to obey a law, however, can affect the nature of the law itself. People might protest a law they find irrational, repressive, or unjust by refusing to comply. A battle of wills might ensue between the ruling authorities and the people whose behavior contradicts the law, and those responsible for law-making might even decide to change the law due to popular demand. In the Islamic context historically, it is difficult to determine how widespread practice may have influenced the legal conclusions of jurists, but identifying ways to make

[9] Al-Maqrīzī, *al-Khiṭaṭ*, 1:720. [10] Ibn al-Ḥājj, *al-Madkhal*, 2:55.

connections between social practice and doctrinal rules is crucial (if practically very difficult) in order to understand the development of Islamic law.[11]

A modern response to this egg scenario might be the conclusion that these rulers were not good Muslims because they did not crack down on wrongful acts like gambling, and a good ruler would make sure that Islamic law is applied. Such a response is a rhetorical device that obscures real social questions, however, for all rulers and societies make policy decisions about what rules are more important than others at any given time. The interesting and important questions for this book, and, indeed, for socio-legal history generally, are how they make those decisions and what results ensue for the members of that society.

Case 4.2. Wine, women, and hashish

In the middle of a wave of the plague in 822/1419, Ṣadr al-Dīn b. al-ʿAjamī, the *muḥtasib* of Cairo, took the *wālī* of Cairo with him for assistance on a mission against wrongful actions occurring in the city. The chroniclers reported this *muḥtasib*'s actions succinctly: He poured out thousands of bottles of wine and broke them. He prevented prostitutes from seeking business in the markets and "suspicious places" and forbade the public display of hashish. He instructed women to stop wailing for the dead. He also acted against Christians and Jews, as discussed in the next chapter.[12] This short report invites an exploration of the wide range of wrongs, punishments, and uses of discretion that lie beneath the surface of the text.

The actions that the *muḥtasib* took had ample support in legal doctrine. Scholars prohibited consumption of wine by Muslims, wailing for the dead, consumption of hashish, and prostitution (and, indeed, fornication generally). The meaningful aspects of this event, however, only begin with the observation that Ibn al-ʿAjamī went after actions that were impermissible to Muslims. Why did the *muḥtasib* choose to pursue these behaviors at this time, and how did he decide what to do about these forbidden substances and actions? Wine, hashish, and prostitution might have formed the basis of *ḥadd* crimes, the most serious in Islamic law, but the *muḥtasib* did not pursue this path of punishment.

Quranic verse 5:90 refers to *khamr*, which literally means red grape wine, and describes it as an evil from Satan. Wine drinking by Muslims is not only prohibited but is also considered one of the *ḥadd* crimes, even though the Quran does not set forth a punishment for it.[13] The punishment comes from the practice of the Prophet, who inflicted forty lashes on a man who had drunk wine. Abū Bakr, the Prophet's first successor, also punished wine drinking with forty lashes, but the second successor ʿUmar determined that eighty was the appropriate

[11] See the discussion in Chapter 1, above, of Baber Johansen's study of social practice and legal change in *The Islamic Law of Land Tax and Rent*.

[12] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:486.

[13] Ibn Rushd, *Bidāyat al-mujtahid*, 2:788–789. For a very brief discussion of the *ḥadd* crime of the consumption of wine and other intoxicants, see Peters, *Crime and Punishment in Islamic Law*, 64.

number.[14] Jurists continue to disagree on the appropriate punishment, but agree, with few exceptions, that it is a *ḥadd* crime.[15]

The report does not tell us that anyone was drinking the wine when the *muḥtasib* approached, however; it seems that the bottles were merely stockpiled in some kind of venue that was in the public view or open to the public.[16] For Muslims, wine is an illicit substance and has no legal value. The sale of wine by Muslims is also wrongful.[17] Even the public display of it is punishable as a discretionary wrong; in such cases, typically the wine is poured out and the owner personally punished.[18] The jurists disagreed, however, about what to do with the public display of wine by Christians. The Ḥanafīs said that the wine should not be poured out, since it is a licit substance for them, whereas the Shāfiʿīs said that it should be destroyed.[19] In the present case, Ibn al-ʿAjamī destroyed the wine but took no action against the possessors. If the owners were Muslims, this was a permissible action, but if the owners were Christian, the jurists disagreed about the permissibility of the wine's destruction. Since chronicle reports tended to specify when actions were taken against non-Muslims, it is more likely that the individuals here were Muslims. The *muḥtasib* took the *wālī* of Cairo with him, probably to help with pouring out all of those wine bottles and generally helping to intimidate the individuals into compliance.

The *muḥtasib* manuals all deal with public possession of wine. Al-Shayzarī's and Ibn Bassām's rules are the same: "If the *muḥtasib* sees a man carrying wine or playing musical instruments, the *muḥtasib* punishes (*taʿzīr*) him according to how public interest will be served, after pouring out the wine and breaking the instruments."[20] These two authors did not distinguish between Muslims and non-Muslims, but Ibn al-Ukhuwwa did. He provided that if a Muslim openly displays wine, the *muḥtasib* should pour it out and punish him, and then, using the same language as al-Māwardī, explained the disagreement among the jurists over how to treat a non-Muslim who displays wine.[21] Public possession by Muslims was thus treated in the manuals exactly as in the law books: it is prohibited and subject to punishment by *taʿzīr*.

Pouring out the wine and punishing under *taʿzīr* is to be expected based on *fiqh* rules and the manuals. But the absence of any mention in the report about wine drinking calls for consideration. A zealous *muḥtasib*, eager to punish, might have

[14] Ibn Rushd, *Bidāyat al-mujtahid*, 2:788–789.

[15] For example, the modern scholar al-ʿAwwā does not consider it *ḥadd* since the punishment is not definitively determined in the Quran or *sunna*. Al-ʿAwwā, *Punishment in Islamic Law*, 1–2.

[16] According to Paulina Lewicka, bottles of wine could be purchased in wine shops (as seems to have been the case here) to take away and consume elsewhere, but the wine shops did not also provide a space in which customers could drink the wine. Lewicka, "Restaurants, Inns and Taverns That Never Were," 80. According to Li Guo, public drinking establishments did exist. See generally Guo, "Paradise Lost."

[17] Several *ḥadīth*s explicitly prohibit the sale of *khamr*. See, e.g., al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ*, 3:238 (*ḥadīth* 2226).

[18] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 312.

[19] Ibid.

[20] Al-Shayzarī, *Nihāyat al-rutba*, 109; Ibn Bassām, *Nihāyat al-rutba*, 211.

[21] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 32.

waited around the site for a possible public wine drinker or followed someone home who had acquired a bottle of wine. Al-Shayzarī stated in his manual:

> If the *muḥtasib* comes across a drinker of wine, he whips him forty times, and if he sees that the public interest would be served by eighty times, then he should so [whip] him according to what ʿUmar b. al-Khaṭṭāb did on the basis of the opinion of ʿAlī. The *muḥtasib* strips him of his robe, then takes the whip in his hand and [lashes] him on his shoulders, buttocks, and thighs. This is all after the *imām* has proven the crime, then the *muḥtasib* takes charge.[22]

The manual clearly expects that the *muḥtasib* will be on the watch for a wine drinker and that if he does encounter one, he will refer the matter to a judge or other official with the authority to pursue the case and issue a judgment (the term used in the manual for the official is *imām*). The *muḥtasib* is not supposed to ignore the possible *ḥadd* crimes, the manual suggests, but rather know the limits of his jurisdiction and to whom to refer the matter. Once the perpetrator has been convicted by the judge, the *muḥtasib* may carry out the punishment if requested to do so. In his manual, Ibn al-Ukhuwwa elaborated on several offenses, including a long explanation of the level of proof needed for each *ḥadd* crime and the requisite witnesses.[23] Like al-Shayzarī, Ibn al-Ukhuwwa also stated that the *muḥtasib* could punish *ḥadd* crimes only if he had been delegated to do so by the *imām* (or judge, as *imām*'s delegate) and only once the *ḥadd* crime had been adjudicated.[24]

Yet the report in the case at hand ends with the pouring out of the wine without any mention of any further investigation or consequences. Catching a wine drinker in the act under these facts would require some investigation, presumably, and the *muḥtasib*'s jurisdiction theoretically was limited to matters that were already evident. He might have waited around the wine storehouse, perhaps following a purchaser in hopes of seeing him consume the wine. If *muḥtasib*s (or their assistants) spent their time this way, they would miss other wrongful actions that were truly manifest. Dealing only with possession, and ignoring the possibility that drinking of the wine was taking place somewhere else, was not so much of a choice but the more obvious way to deal with the situation as both a legal and a practical matter.

Economic incentives also lie beneath the surface of the report. The historical chronicles show that from time to time the sultan imposed a kind of tax on vice, including on the production of intoxicants such as *khamr*, *mizr* (a beer, seen in a case in Chapter 6), and hashish, and on the practice of prostitution. Taxes were imposed, abolished, and then re-imposed many times in the Mamluk period, reflecting the struggle between the need for revenue and the repugnancy of tacitly condoning and financially benefiting from wrongful actions.[25] It is not clear

[22] Al-Shayzarī, *Nihāyat al-rutba*, 108.
[23] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 184–190.
[24] Ibid., 187.
[25] Rabie, *The Financial System of Egypt*, 119–121. Sultan Baybars (r. 1260–77) cracked down on vice, abolished taxes on *mizr*, hashish, wine, and prostitution, later re-imposed them, and then again abolished some of them. Ibid. Subsequent sultans engaged in the same kind of process of balancing the need for revenue with the appearance of tolerating (or even encouraging) the act that was the subject of the taxation. Ibid.

whether the taxes were being imposed at the moment of this event, but that particular detail is not necessary to make the larger point that the *muḥtasib*'s actions with regard to wine allowed him to act against public spectacles of vice without stopping or closing their revenue-producing business altogether. The taxes seem to have been imposed on the production of wine and not on individual sales, and if that was the case, at this point the tax on the bottles had already been paid.[26] Destroying them thus did not diminish the tax revenue for the sultanate except insofar as it might have deterred future production. Likewise, a general tax that prostitutes had to pay would not be affected by discouraging their activities for a short period of time.

Ibn al-ʿAjamī also acted against the public display of hashish, a substance that was used in several solid forms.[27] Producers baked the leaves and then rubbed them until they formed a kind of paste, which was then shaped into a pill. Alternatively, they dried, toasted, and husked the leaves, and then added in sesame and sugar to form a dry product that could be chewed.[28] The people the *muḥtasib* acted against could have been showing hashish publicly in one of several ways. They might have been sellers of it, displaying their wares publicly; perhaps they were customers, congregating around an area of sale; or they might have been actual consumers, chewing on hashish in a public venue known for communal consumption and socializing—or perhaps there were so many individual consumers, spread through town, as to become a noticeable problem.

Many jurists considered hashish an intoxicant and analogous to *khamr*, thus making its consumption a *ḥadd* crime.[29] Some, however, questioned whether hashish was actually an intoxicant.[30] The Mamluk-era Mālikī scholar al-Qarāfī (d. 1285) considered hashish corrupting (*mufsid*) but not intoxicating, and thus, in his view, its consumption was not a *ḥadd* crime. However, as a corrupting substance, he was of the opinion that *taʿzīr* punishment should be used to prevent people from consuming it.[31] A Shāfiʿī view considered hashish an anesthetizing substance, not an intoxicating one, and so its consumption was not subject to *ḥadd* penalties.[32] Some jurists, mainly of the Ḥanafī school, only punished under the heading of *ḥadd* actual intoxication from an intoxicating substance other than *khamr*, and not merely the consumption of a small amount.[33] If consumption of

[26] Ibid., 119. According to Paulina Lewicka, the wine and beer sellers were also probably the producers of the beverages themselves. Lewicka, "Restaurants, Inns and Taverns That Never Were," 73.

[27] Rosenthal, *The Herb*, 1, 21. The Arabic term hashish does not have an intrinsic connection to the hemp plant, but became a widely used nickname for it. In its plain meaning, hashish can indicate grass that is used as animal feed, a medicinal herb, or simply weeds. The context here indicates that the substance was cannabis, the intoxicating hashish. Franz Rosenthal also speculates that the term was meant to be endearing rather than vituperative, in the same sense as the English word "grass." Ibid., 21–22.

[28] Ibid., 57.

[29] Ibid., 106.

[30] Ibid., 106–107.

[31] Al-Qarāfī, *Al-Furūq*, 1:381.

[32] Al-Qalyūbī, *Qalyūbī wa-ʿUmayra*, 4:202–203.

[33] Ibn Rushd, *Bidāyat al-mujtahid*, 1:871–872.

hashish did not (or could not) cause the consumer to become intoxicated, then no *ḥadd* crime had occurred in their view, although this consumption could be punished as *taʿzīr*. There was, then, no juristic consensus on how to treat hashish.

The *muḥtasib* manuals do not specifically mention hashish—whether its possession, sale, or consumption. They do, however, say that the *muḥtasib* should extend the rules in the manuals to similar circumstances because the short books could not possibly cover everything. Al-Shayzarī's last chapter includes the statement: "If I began to mention all that the *muḥtasib* has to do, this book would have been long. I have therefore mentioned in this book the rules of *ḥisba* applicable to the owners of well-known crafts, how to discover their frauds and swindling, the jurisdiction of the *muḥtasib*, and the roots by which the *muḥtasib* can figure out rules by analogy for what was not mentioned."[34] Ibn al-Ukhuwwa warned the *muḥtasib* in the final lines of his manual that other wrongs are connected to the ones that he did mention, and these others must likewise be forbidden. He instructed the *muḥtasib* to use his wisdom and knowledge to derive rules for new circumstances through analogy.[35]

Ibn al-ʿAjamī's treatment of the public display of hashish illustrates that the outcome of the legal event depends heavily on the knowledge of legal officials. Did this particular *muḥtasib* know that many jurists treated hashish like wine? Did he rely solely on the manuals, in which case he would have found no statement of hashish's prohibition? This *muḥtasib* was considered learned in Ḥanafī *fiqh* and would have had knowledge far beyond that of the manuals, although that might have been limited to the Ḥanafī school. What would have happened if one of the hashish merchants tried to convince him that hashish is fundamentally different from wine and thus permitted? Might the *muḥtasib* have answered that he was acting under the sultan's *siyāsa* power to enforce the views that do forbid hashish? These questions, while unanswerable from the historical report, do serve the important function of framing the inquiry into how people's lives were affected by the particular legal official handling the matter.

But Ibn al-ʿAjamī did not treat hashish consumption as potentially *ḥadd*-worthy, nor did he even destroy the hashish. He seemed concerned only with its public display—if people would keep their hashish production, sale, and consumption out of public view, he would leave them alone (other than possibly imposing a tax on the product).[36] The treatment of hashish raises a more general point about respect for private space, a concern that was far more enduring than particular revenues raised from this substance. Wrongs must be open and evident to fall in the *muḥtasib*'s jurisdiction, as has been shown. Several widely narrated reports about

[34] Al-Shayzarī, *Nihāyat al-rutba*, 118.

[35] The analogy is limited to using the existing rules in the manuals, which distinguishes it from the *qiyās* (analogy) used by jurists in the larger legal interpretation process.

[36] If a tax was imposed on the producers of hashish, the *muḥtasib* could have employed the same strategy used with the wine to maximize both revenue and his status as a legal enforcer. Evidence does indicate that a tax was imposed on the producer prior to the Mamluk period: a hashish mill in Cairo during the Ayyubid period had to pay as much as sixteen *dīnār*s daily. Rabie, *The Financial System of Egypt*, 119–121.

ʿUmar, the second successor to the Prophet, exemplify this rule. In one of these reports, ʿUmar scaled the walls of a house, saw the owner in a reprehensible state, and reproved him. The owner replied, "Commander of the Faithful, if I have sinned once, you have sinned three times." "How so?" asked ʿUmar. The owner replied, "The Quran says: 'Do not spy,' and you have done so. The Quran says: 'Come into houses through their doors,' and you have entered over the roof. And the Quran says: 'Do not enter the houses of others until you have made yourselves known and greeted the inhabitants,' and you have not greeted me." Completely out-argued, ʿUmar retreated, repentant.[37]

For al-Māwardī, although in principle the *muḥtasib* may not spy nor "tear down the curtain out of consideration for the one who may be hiding behind it,"[38] if the situation involves an imminent crime the damage of which will not be remediable, the *muḥtasib* may spy in order to investigate. The examples he gave of such situations are when someone the *muḥtasib* believes to be reliable informs him that a man has retreated into seclusion with another man in order to kill him, or is alone with a woman in order to commit fornication. If the situation does not rise to this level of urgency, he may not spy.[39] Ibn al-Ukhuwwa repeated this language in his manual.[40] Who determines whether the necessary level of urgency has been met is not specified, and the many possibilities for disagreement over the definition can easily be imagined.

The doctrinal prohibitions on spying could also be seen to serve the sultan's own interests. Public acts are more important to address; left unchallenged, they may undermine the ruler's authority and suggest to others that they, too, can get away with such wrongdoing. Intruding on private behavior may cause other problems, such as compromising the modesty of women and perhaps men. As a matter of efficiency, the authorities cannot possibly address every single unlawful act and they must make policy choices about which wrongdoings they will pursue and which they will leave alone. Wrongdoers behind closed doors will have to answer for their deeds on the Day of Judgment, but in this world, wrongs committed in public should be the prosecutorial priority, the sultan's line of thought may have gone. In this case, the *muḥtasib*'s tactic was to move the hashish out of his jurisdiction. He basically applied the rule of "if I cannot see it, I cannot, and will not, take any action against it."

Ibn al-ʿAjamī also sought to prevent prostitutes from seeking business in the markets and in places in which their presence raises suspicion. Prostitution implicates the issue of *zinā*, which is sexual intercourse between a man and a woman knowingly outside of the context of a valid marriage or lawful ownership. *Zinā* is a *ḥadd* crime and, if the high standards of evidence are met and no mitigating factors—such as doubt as to fact or law—are present, it is punished by either one

[37] Al-Ghazzālī, *Iḥyāʾ ʿulūm al-dīn*, 2:427. See generally Mottahedeh and Stilt, "Public and Private as Viewed Through the Work of the *Muḥtasib*." Reza examines four different reports involving ʿUmar and the issue of spying on behavior behind closed doors. Reza, "Islam's Fourth Amendment," 722–728.

[38] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 314.

[39] Ibid. See Alshech, "'Do Not Enter Houses Other than Your Own.'"

[40] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 37.

hundred lashings or stoning to death.[41] Even if the elements of *zinā* cannot be proven, sexual intercourse outside marriage or ownership can be punished under the heading of *taʿzīr*. Given the gravity of unlawful sexual relations, the *muḥtasib* here seems strikingly unconcerned, and he suggested that the prostitutes need only stay out of the markets and other places in which their presence seems suspicious. This may refer to caravansaries or other sites where men gather and that might be known for illicit behavior generally, such as consumption of intoxicating substances. The *muḥtasib* did not address the underlying wrongful actions but just required that the prostitutes avoid displaying the preparatory actions to them.

What accounts for the *muḥtasib*'s behavior here? Were prostitutes—and their customers—excused from the normal rules, either legally or practically? The high evidentiary requirements for establishing *zinā* may explain in part why he did not pursue this charge. The necessary evidence is four eyewitnesses to the act of penetration or a confession (made four separate times according to most jurists) by the offenders.[42] The *muḥtasib* was not an eyewitness to any act of illicit intercourse; he only saw the prostitutes seeking business. If customers were still in the area, he might have sought to identify particular offenders and seek eyewitnesses to be brought before a judge. But surely there were practical obstacles to finding eyewitnesses, who may have been customers themselves and who would have feared the consequences of getting dragged into a prosecution. At the time of this event, in 822/1419, this *muḥtasib* was serving his third term. While the first two were not very long, his experience in the position, combined with his legal education, should have given him a sense of when and how individuals were willing to step forward and testify in a *ḥadd* prosecution.[43]

Another reason the *muḥtasib* may have avoided initiating a *ḥadd* investigation is based on the unique view of Abū Ḥanīfa, who held the position that there is no *ḥadd* penalty imposed when a man has sexual intercourse with a woman he has hired for that purpose due to the doubt it raises as to the facts of the event. His view did not dismiss the act completely, however, leaving open the possibility that it could be punished as *taʿzīr*. Other Ḥanafīs disagreed with Abū Ḥanīfa on the

[41] Peters, *Crime and Punishment in Islamic Law*, 60. The *muḥtasib* manuals also contain a specific punishment for prostitutes in the section on *taʿzīr*. Both al-Shayzarī and Ibn Bassām wrote, "Whenever the *muḥtasib* hears of a woman prostitute or singer, he should call upon her to repent for her crime, and if she repeats it, punish her (*taʿzīr*) and expel her from the country." Al-Shayzarī, *Nihāyat al-rutba*, 110; Ibn Bassām, *Nihāyat al-rutba*, 212.

[42] Peters, *Crime and Punishment in Islamic Law*, 60.

[43] Further, alleging *zinā* might have carried a risk to the *muḥtasib*, exposing him to the commission of the *ḥadd* crime of *qadhf*, unsubstantiated accusation of unlawful intercourse. The Quranic verse 24:4–5 states: "And those of you who accuse chaste women and then are unable to produce four witnesses, flog them with eighty stripes and refuse to accept from them thereafter any testimony, since they are the depraved ones, except those who repent and make amends afterwards." (Muhammad Asad, trans.) A *muḥtasib* who wanted to accuse people he encountered of unlawful sexual intercourse would need to have his witnesses lined up in advance and make sure they testified in accordance with the strict evidentiary rules of *zinā*. Peters, *Crime and Punishment in Islamic Law*, 63–64. The person accused must be chaste, in the sense of no prior conviction of unlawful intercourse and no prior *liʿān* procedure (where a husband can deny the paternity of a child born to his wife). Ibid., 63.

grounds that hiring is never a permissible path to licit sexual intercourse and so no doubt exists.[44] This *muḥtasib* was a Ḥanafī and might have been influenced by Abū Ḥanīfa's view, which could have caused his relative tolerance for prostitution.

In addition, legal officials in the Mamluk era rarely took any action against prostitution, not for legal reasons but as a matter of custom.[45] Chroniclers occasionally mentioned efforts to stop prostitution, while sounding unsurprised that these efforts were unsuccessful. As with wine and hashish, the sultanate collected a tax from prostitutes, which it would lose if the women ceased working.[46] In 827/1424, for example, prostitutes were offered the possibility of paying a one-time final tax to leave the profession and marry.[47] In its treatment of prostitution, the sultanate again tried to balance its desire to reduce wrongdoing with its own need for revenue. Viewed in this context, the *muḥtasib*'s actions in this case are more understandable, since there was no reason for him to treat behavior that was tolerated as a serious crime.

The final action of Ibn al-ʿAjamī considered here is forbidding women from wailing for the dead. At first sight, wailing does not seem as serious as wine drinking and fornication. Why should funeral mourners be a top enforcement concern? The term "wailing" (*niyāḥa*) signifies vocal lamentations for the deceased. It may include physical manifestations such as pulling hair and scratching the body to draw blood, but it does not need to involve the shedding of tears.[48] The jurists agreed that wailing was forbidden, based in large part on Prophetic *ḥadīth*s. According to Leor Halevi, "in one of the Muslim garrison cities of Mesopotamia, male pietists advocated oral traditions harking back to Muḥammad's age, with the intention of circumscribing the role of women in death rituals."[49] The manuals do tell the *muḥtasib* to punish wailing: the *muḥtasib* should patrol the cemeteries and punish women wailing on the basis of a *ḥadīth* of the Prophet forbidding it (Ibn Bassām);[50] the *muḥtasib* should inspect the graveyards and if he hears a hired female mourner he should punish her because wailing is forbidden (al-Shayzarī).[51] Since wailing is punished under *taʿzīr*, the legal official may determine the best way to deal with it.[52] The reports in this case do not say how Ibn al-ʿAjamī sought to prevent the women from wailing or whether he succeeded.

[44] Al-Sarakhsī, *Kitāb al-Mabsūṭ*, 9:58.

[45] For a discussion of the tolerance of prostitution in the Mamluk period, see ʿAbd ar-Rāziq, *La femme*, 45–48.

[46] See Rabie, *The Financial System of Egypt*, 119–121.

[47] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:666. A similar effort occurred in 778/1376. Ibid., 3:266.

[48] "Niyāḥa," *al-Mawsūʿa al-fiqhiyya*, 42:49. Halevi, *Muhammad's Grave*, 114–142, has a full chapter on wailing.

[49] Halevi, *Muhammad's Grave*, 116.

[50] Ibn Bassām, *Nihāyat al-rutba*, 212.

[51] Al-Shayzarī, *Nihāyat al-rutba*, 110.

[52] Leor Halevi reports ways in which wailing was punished. The Prophet Muḥammad reportedly ordered a man to scatter dust in the mouths of wailing women, and ʿUmar once whipped wailing women, although Halevi doubts the veracity of that report. Kufan jurists tended to try to prevent women proactively rather than punish them after the fact by locking them inside before the men began the funerary procession. Halevi, *Muhammad's Grave*, 126–131.

All of Ibn al-ʿAjamī's actions, then, were generally consistent with doctrine, but two further questions need to be asked: why did the *muḥtasib* focus on these particular rules of doctrine, and how did he translate the rules into the specific orders he carried into the public space? Legal doctrine does not enact itself, and no *muḥtasib* was a robotic enforcer of all legal rules. Did wine, hashish, prostitution, and wailing pose the most pressing threats to society at this time and thus for the *muḥtasib*?

The available historical information suggests that the biggest problem at the time of this case was a new wave of the plague. A few days before Ibn al-ʿAjamī took these actions, the people were required to join the sultan in a prayer for relief (see Case 3.4).[53] One common explanation for plagues across religions in this time was divine punishment for human wrongs. It is possible that Ibn al-ʿAjamī attempted to eliminate, or reduce, wrongful elements from the city in an effort to please God. The evidence does not allow a firm conclusion that the *muḥtasib* was attempting to show God that Egyptians did not deserve the plague, but it certainly suggests such a link. Further, wailing would be a more significant problem during a wave of the plague because of the increased numbers of deaths and funerals.

Suggesting that the *muḥtasib* might have been motivated by a plague to crack down on actions that were wrongful (yet normally tolerated) does not mean that this case is merely about an understanding of the natural world, for it illustrates a far larger and more important point: rules written by jurists can be read, copied, discussed, and applied far beyond the milieu of the jurists who wrote them and beyond their humble conclusions. Jurists readily conceded that their interpretation represented merely their best attempts to discern God's law and they admitted that their interpretive results were only probable (although a consensus could raise conclusions to the level of certainty). This recognition of mere probability is what allowed for multiple opinions to be tolerated and to flourish. But when articulating rules, the jurists could not control how they might later be adopted and used by others.

What happens when the *muḥtasib* takes a rule, even a generally agreed-upon rule, and enforces it with very tangible consequences? This is a distinct and specific act, separate from the process by which jurists determined the rule. For example, a gang of hashish traders might be causing havoc in the city, and the sultan and his apparatus might crack down on them and devote energy to punishing every user and seller. In a second scenario, hashish use is minor and discreet, but the sultan decides to go after a few consumers. The sultan might devote substantial resources to this, taking them away, for example, from policing bread merchants who have discovered a new way to cheat customers by adding sawdust to their dough.[54] The people might be complaining bitterly over bread quality, while precious state resources are used to fight hashish rather than bread adulterators. From a doctrinal

[53] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:485–486.

[54] The manuals did warn that bread makers might adulterate their dough with substances like sawdust. Al-Shayzarī, *Nihāyat al-rutba*, 21; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 91; Ibn Bassām, *Nihāyat al-rutba*, 21.

viewpoint, the two cases are the same: hashish is prohibited. But from the perspective of an individual living in that environment, the results are very different, and the policy decision has significant implications.

Unfortunately, we do not know how the people reacted in the immediate aftermath of Ibn al-ʿAjamī's actions. Did the wine merchants return to their trade after the raid? Did prostitutes resume soliciting business in public? Did it change anyone's behavior? While wine selling, hashish consumption, and prostitution certainly continued to exist in society after this event, we cannot know how the specific people the *muḥtasib* encountered in this case responded. For that perspective, the last two cases of the chapter offer more.

Case 4.3. Seeking a front-row seat

In 825/1422, Cairo and Fustat were decorated in preparation for the elaborate annual overland pilgrimage procession, which departed from the Citadel and wound its way through the city streets before heading to the desert and onwards to the Arabian peninsula.[55] The *muḥtasib* Ṣadr al-Dīn b. al-ʿAjamī, who figured in the previous case, strictly prohibited women from sitting in front of the merchants' shops, and they initially refrained from doing so. He did this because usually, in an effort to have a good view, women would stake out their places on the morning of the day before the pilgrimage departed, sit in front of shops in the marketplace during that day, and then sleep in those places that night. The next day, then, they would be well placed to watch the caravan. During the time that the women were in the marketplace, they would mix with men, and unacceptable behavior would take place. However this *muḥtasib* did not enforce his prohibition adequately and women went to claim their spots in the market, due to his neglect.[56]

What was wrong with women sitting in public? From the report, the problem was not so much their presence, but rather their mingling with men and the resulting inappropriate behavior, although what actually happened was not specified. The manuals do show a concern for mixing of the sexes in public. In the chapter regulating cotton carders, al-Shayzarī instructed the *muḥtasib* to forbid women to sit at the doors of the carders' shops, waiting for the completion of carding, and to forbid the cotton carders to talk with the women.[57] Whereas this type of provision in the *muḥtasib* manuals assumes an inherent problem with women in public, other provisions are more concerned with men harassing women. Al-Shayzarī's provision is typical: the *muḥtasib* should inspect the places where women gather, such as thread or cotton markets, river banks, doors of bathhouses, and others. If he sees a boy alone with a girl, speaking with her (other than in the

[55] The historian al-Biqāʿī reported that people who wanted to watch the caravan in Cairo slept in the markets, staying up all night playing games. Al-Biqāʿī, *Iẓhār al-ʿaṣr li-asrār ahl al-ʿaṣr*, 1:389, 2:49. For an overview of the procession, see Meloy, "Celebrating the *Maḥmal*," 412.

[56] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:614. Al-Maqrīzī added that this prohibition was one of the good things that this *muḥtasib* did. Ibid.

[57] Al-Shayzarī, *Nihāyat al-rutba*, 69.

context of a market transaction) and looking at her, then he should punish (*taʿzīr*) the boy and forbid him to stand there. Many corrupt men hang around these places with no reason other than to joke and flirt with the women.[58] Ibn al-Ukhuwwa added that if a man stands in a street frequented by women without a legitimate reason for doing so, the *muḥtasib* should inflict a punishment (*taʿzīr*) upon him.[59] These rules suggest that women are presumptively entitled to be present in streets and market areas where they need goods and services. It is the men who must justify their presence. In the case of the camp-out, however, the *muḥtasib* chose to send the women away from the men, rather than the other way around.

What was the relationship between the action taken by the *muḥtasib* and the behavior he wanted to prevent? One explanation of his actions is a concept of "blocking the means," which is stopping an act that is itself permissible but that will lead to a prohibited act.[60] The Mālikīs and Ḥanbalīs tended to accept blocking the means as a way to produce legal rules, while the Shāfiʿīs and Ḥanafīs usually rejected it as a means of creating a rule.[61] Accepted ways of blocking the means to *zinā*, for example, include prohibiting a man from being alone in seclusion (*khalwa*) with a woman and prohibiting a woman from making a long journey alone, even if it be for the pilgrimage.[62] The Mamluk-era Mālikī jurist al-Qarāfī, who accepted the doctrine, said that there are some acts that no one would suggest should be blocked, presumably because the connection between them and the prohibited act is too tenuous, such as preventing the cultivation of grapes out of fear that they could be made into wine or preventing people from living near one another out of fear of *zinā*.[63] In our case, the *muḥtasib* may have determined that women sitting outside the shops overnight created the perfect condition for fornication, although there is no evidence that this occurred. In order to prevent the means to this crime, he prohibited its preparatory steps, although it is not at all clear that jurists would agree (whether through the doctrine of blocking the means or on some other grounds) on the wrongfulness of women sitting in public.

The *muḥtasib*'s decision may also have been shaped by the ruler's power of policy-based punishments (punishment in the mode of *siyāsa*, or *siyāsatan*). Women sitting outside shops seem like an unlikely threat to public order, less dangerous than the attractive male ʿUmar banished, as related in Chapter 1. Typically, policy-based punishment involves social unrest that threatens the society, and this seems like a weak case of this. Unfortunately, no evidence here indicates the precise reason why the *muḥtasib* prohibited the women from camping in the markets. Was he thinking in terms of blocking the means to a

[58] Ibid., 109–110. Ibn Bassām, *Nihāyat al-rutba*, 211, is similar.
[59] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 31–32.
[60] "Sadd al-dharāʾiʿ," *al-Mawsūʿa al-fiqhiyya*, 24:276–282.
[61] Ibid., 24:276–278. The Shāfiʿīs and Ḥanafīs did not necessarily accept as permissible the behavior that a Mālikī or Ḥanbalī would prevent under this concept, but they based their prohibition on the act itself and not merely its role as a means to another act.
[62] Ibid., 24:277.
[63] Al-Qarāfī, *Al-Furūq*, 2:60. Pressing grapes for someone who will turn that substance into wine, however, should be prohibited as a means to an impermissible end. Ibn Qayyim al-Jawziyya, *Iʿlām al-muwaqqiʿīn*, 3:158.

particular wrong, such as fornication? If so, did he have a sense of how jurists who accepted the blocking concept would have treated the means he used? Or did he determine on a policy basis that these women posed a danger to society, as he saw it, and decided what to do regardless of any doctrinal basis for his actions? Did he consciously decide that the burden must fall on the women, and not the men, or was this an assumption that was such an entrenched part of his and his male contemporaries' worldview that they would not have thought to question it?

The response of the women (how many were involved is unknown) provides significant insight into the meaning for them of the encounter with the *muḥtasib*. These women initially complied and refrained from going out into the marketplace. Perhaps the strictness of the *muḥtasib*'s initial prohibition made them decide that the risks of violating it were too high. But they did not close their doors, stay home, and give up. They apparently monitored the situation and carefully calculated when the *muḥtasib*'s attention had turned sufficiently away from them (and perhaps onto a new problem), and at that moment their interest in breaking the rule surpassed the *muḥtasib*'s efforts to enforce it. The historical report specified that the *muḥtasib* was negligent in enforcing his order, and the women seemed to understand that well.

Unfortunately, we cannot know more about the motives and thought-processes of the women. Did they believe that the *muḥtasib*'s prohibition was a correct rule of Islamic law that they were willing to violate anyway? Or did they reach their own conclusion that he had over-reached his authority and imposed a rule that would attract little juristic support, and decided for themselves that they were justified in violating it? While we cannot answer these questions adequately, raising them is the necessary first step towards seeing that reactions were more complex than resistance or compliance, and that the people may have taken into consideration a wide range of factors—principled and practical—when deciding how to respond.

Case 4.4. What could stop a plague?

At the beginning of the month of Ramadan in 841/1438, a recurrence of the plague swept through Cairo and Fustat, causing many deaths.[64] As was the custom in Ramadan, the sultan sponsored the oral reading of al-Bukhārī's *ḥadīth* collection, and judges, jurists, and students attended the sessions. On the last day of the reading, Sultan al-Ashraf Barsbāy took advantage of the presence of jurists and judges to ask them a question: What sins does God punish by a plague? Some said that if fornication (*zinā*) spreads among people, a plague will appear, and others added that women were getting dressed up and walking in the market streets day and night. One jurist said that it was in the public interest (*maṣlaḥa*) to forbid women from walking in the markets. Another challenged him and said that only women who adorn themselves in finery should be forbidden, but that older women and

[64] Dols, *The Black Death in the Middle East*, 311.

those who do not have someone to take care of their errands should not be prevented from going out for their needs.

The sultan was inclined to forbid all women from appearing in the streets, thinking that this would lift the plague, and he ordered the jurists to meet with him again the next day. When they did so, they agreed with the sultan's proposal. Criers called out in Cairo and Fustat and their suburbs that women may not leave their houses and that no woman may walk in the streets or markets. Any woman who leaves her house will be threatened with death, they announced. As a result, women, young and old, refrained from going out. The *wālī* of Cairo and some other officials patrolled the streets, beating any women they encountered. The criers repeated the warnings and, as a result, not a woman was to be found on the streets. This caused suffering to widows, craftswomen, women without a male to assist them, and female beggars. The sales of many goods languished, including women's clothing and essences, and this affected the profits gained in the markets.[65]

The sultan announced that he was determined to appoint as *muḥtasib* an energetic man, and he considered and rejected many. Meanwhile, the plague continued to ravage the city. Dawlat Khuja was appointed for his first and only term as *muḥtasib*, reportedly due to his power, force, strength in punishment, and lack of mercy, and he vigorously enforced the rule prohibiting women from appearing in public. When Dawlat Khuja was out patrolling the streets, two particular events happened. First, a woman's only son died from the plague. She wanted to follow the funeral bier but was forbidden under the sultan's order. She was so upset that she threw herself from the top of the building to the ground and died. Then, a woman left her home for a necessity. When, by chance, this *muḥtasib* ran into her, he called for his assistants to seize her and beat her. She collapsed unconscious from fear. People interceded and convinced the officials to let her go; they carried her home, but she was sick for a time thereafter.[66]

The sultan's discussions with the jurists at the beginning of this case offer a unique view into the legal process, with each particular opinion representing a distinct way of thinking about law and society. The first group of respondents to the sultan suggested that if fornication spreads among people, a plague will appear as a sign of God's displeasure at the failure to curtail *ḥadd* crimes. The idea that God might punish people for offenses was a prominent view in Egypt (and also can be

[65] A brief respite allowed slave girls to purchase goods for their masters (but they had to keep their faces exposed when in public) and allowed elderly women to go out for their needs. Women were allowed to go to the bathhouses but had to return home before evening. During these events, Christians and Jews came under scrutiny, and there were reports of the pouring out of wine and the destruction of a monastery. Al-Maqrīzī, *Kitāb al-Sulūk*, 4:1033; Ibn al-Ṣayrafī, *Nuzhat al-nufūs*, 3:406.

[66] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:1031–1033; Ibn al-Ṣayrafī, *Nuzhat al-nufūs*, 3:404–409; Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 15:93–96; Ibn Iyās, *Badāʾiʿ al-zuhūr*, 2:181–183 (adding that if a woman had to leave her house in order to wash a deceased person, she had to first receive permission from the *muḥtasib* to do so and then wear a marker on her mantle to show that she had permission to go out for this purpose). Michael Dols discusses this case in the context of the plague. Dols, *The Black Death in the Middle East*, 114–115. Yossef Rapoport cites this incident as evidence of the importance of women in the economy of Cairo. Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, 36–37.

found in medieval Christian writings).[67] Specifically, some Mālikīs viewed the plague as a punishment for *zinā* occurring in society.[68] A naturalist view of the plague was also popular, and scholars wrote scientific treatises explaining the medical causes and how the spread might be curtailed.[69] The sultan's question, however, begged for an answer that placed responsibility on human wrongdoing.

The second group of respondents added the comment that women indeed were walking in the market streets day and night. This is far removed from unlawful sexual conduct, but they were apparently supporting the first view by noting that women were dressed in their finery and walking around in public, suggesting that they had no legitimate purpose for doing so.[70] This statement further suggests that if women do not go out in public, the chances for fornication will decrease because they would not be able to interact with the men who might serve as illicit partners. If fornication decreased, then God would stop the plague. This kind of thinking (which generally reflects the concept of blocking the means, although it was not presented in this specific way in the reports) shows how human discretion can significantly influence legal conclusions. If these jurists had said instead that too many rowdy and disrespectful men were traversing the streets, flirting with women in ways that might lead to fornication, the conversation might have developed in a different way.

One scholar then said that it was in the public interest to forbid women from walking in the markets. He moved away from the initial question about the cause of the plague and God's anger, but picked up on the topic of women in public and moved the conversation toward public policy. He seems to have been saying that it was in the public interest to forbid women from the market; doing so may relieve any wrongdoings that God was punishing by the plague, and it is also good for society more generally, presumably because their presence could lead to immoral behavior and wrongful actions. Implicit in his comment is the recognition that the sultan has the authority to act on the basis of public interest, which is the power of *siyāsa*. The final comment came from a jurist who said that only women who make themselves up should be forbidden from appearing in the market. He apparently agreed that women should be kept inside their homes on the grounds of public interest, although he proposed a narrower formulation that exempted women of modest appearance from the rule.

The reports suggest that the women were quite upset by the *muḥtasib*'s orders, but little was said about acts of resistance. The record mentioned only one woman who violated the rule, and was seized as a result, and another woman who was so upset about it, but unwilling to simply disobey, that she apparently committed suicide by throwing herself from the roof of a tall building. How did each of these women make her own calculations about the rule? Did she weigh her own need to break it against

[67] Dols, *The Black Death in the Middle East*, 115.
[68] See the discussion in Case 3.4.
[69] Dols, *The Black Death in the Middle East*, 84–109. On legal and theological responses to the plague, see also Stearns, "Contagion in Theology and Law"; idem, *Infectious Ideas*.
[70] Ibn al-Ukhuwwa also criticized women's public dress in a lengthy aside in the chapter on regulation of the bathhouses. Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 157.

the possible punishment, or against the validity of the rule itself? Would a *muḥtasib* who was respected for his legal knowledge and integrity command a different measure of authority, or was a reputation for fierceness the best deterrent?

Dawlat Khuja served only briefly, dying a few weeks after his appointment. He was a soldier and served as *wālī* of Cairo and then as its *muḥtasib* as well. The historian al-Maqrīzī described him as an evil and oppressive tyrant and not really even a Muslim, although al-Maqrīzī was particularly offended by military men serving in legal positions and probably exaggerated his negative characteristics as a result. That Dawlat Khuja was elderly when he died suggests that he was adept at staying in the good graces of the rulers. During his short tenure as *muḥtasib* he diligently enforced the sultan's orders to keep women inside their homes. When he encountered a woman on the street, he acted as if he had found the source of the plague itself. But how long could he have enforced such a rule in the face of women who had no other way to acquire necessary food and supplies?

This case shows the *muḥtasib* enforcing a rule given to him by the sultan, a rule that began with advice the jurists presented. In advising the sultan, the jurists combined clear doctrinal rules (fornication is prohibited), beliefs about the natural world (the plague is a punishment from God for wrongful human behavior), assumptions about human behavior (the presence of women in public leads to fornication; if men do not see women, then incidences of fornication will decline), and presumptions about the economic and social structure (households can survive without women shopping or working outside the home). A *muḥtasib* chosen for his loyalty and harshness was then appointed to carry out the decision that resulted from these discussions. This case is valuable because all of these considerations were presented; usually, conclusions about the law, whether made by a judge, mufti, *muḥtasib*, or other official, were recorded in a way whereby the underlying factors are much more difficult or even impossible to discern, even though they must exist. The details of this case show how important it is to attempt to untangle the strands of any decision, even when it only leads to further questions without clear answers.

Conclusions

The *muḥtasib*s in these cases forbade behavior of specific sections of society—gambling boys, women sitting in front of shops on a particular day, wine sellers, hashish imbibers, prostitutes, wailing women, and, only in the last case, women more broadly. How the *muḥtasib* enforced these prohibitions is not clear in all cases, but they all come under the heading of *taʿzīr*, discretionary punishment. Certainly in the fourth case, women were threatened with physical punishment if they left their homes, and the reported beating of several women must have served as a deterrent. In the second case, the *muḥtasib* did not just order the wine dealers to cease selling but actually poured out the wine, ensuring that no sale of that wine would be possible thereafter. But in all other cases, the individuals, ranging from young boys gaming with eggs to prostitutes, seem only to have been told to cease their behavior.

Most of the activities of the second case—wine selling, prostitution, hashish consumption—might have amounted to *ḥadd* crimes if further investigation were done. The *muḥtasib* might have searched for the consumers of the wine or customers of the prostitutes, and then referred them to a judge to adjudicate the *ḥadd* offense, but he did not. Instead, the *muḥtasib* appeared to comply with the doctrinal prohibition on spying and dealt only with what was in public view.[71] That the *muḥtasib* instead punished all of the actions in this chapter as a matter of *taʿzīr* may seem the obvious path, but it is important to also consider the possible choices the *muḥtasib* did not make.

In the first and second cases, the doctrinal basis for the *muḥtasib*'s actions is clear. Gambling when property is at stake is wrongful as an agreed-upon matter, and the actions of the second case (prostitution and consumption of wine and hashish) were generally either prohibited or considered repugnant by jurists. The third and fourth cases, however, are harder to characterize as the application of doctrine. No doctrinal rules told the *muḥtasib* that women could not be present in front of shops in the market or in the market generally, and the manuals even contemplated that women had the right to be in market areas that sold goods they needed. But when women went beyond shopping to camping out, and when unspecified inappropriate behavior threatened to take place, the *muḥtasib* focused on the women and forbade their presence. From a doctrinal perspective, this can be seen as an exercise of blocking the means (the camp-out) to the wrongful end (the inappropriate behavior). It also can be seen as the exercise of the sultan's ability to prevent and punish as a discretionary matter (*siyāsatan*).

The reports from all the cases convey or at least suggest a sense of resistance by the people upon whom these rules were imposed. Gambling boys continued year after year, and only sometimes would the *muḥtasib* send an assistant to stop them. The women seeking a view of the caravan in the third case only waited a short amount of time before returning to claim spots on the caravan's path; they seem to have accurately measured the amount of resources the *muḥtasib* was willing to put into policing them. In the fourth case, however, the sultan was determined to keep women from the markets as part of a larger effort to stop the latest wave of the plague, and severely threatened violators. This threat seems to have worked as a deterrent, assisted by the newly appointed *muḥtasib*'s reputation for aggressive measures, which he, indeed, showed to be accurate when he encountered the one woman who dared to violate the order. But the prohibition soon ended entirely as a measure that was impossible to sustain in the face of the many reasons that women needed—or wanted—to be outside their homes.

Many contextual factors accounted for the *muḥtasib*s' actions. Environmentally, the most significant was the plague. The plague of 822/1419 seems to have influenced the *muḥtasib* in the second case, and the connection to a later wave is explicit in the fourth case. For wine, hashish, and prostitution, the revenue that the sultanate gained from the "vice tax" also might have influenced how the *muḥtasib*

[71] The *muḥtasib* may have been influenced by a general maxim of Islamic law to avoid *ḥadd* in case of doubt. See Rabb, "Islamic Legal Maxims as Substantive Canons of Construction."

chose to act, showing that following the financial trail is often very helpful to piece together the full meaning of the events. And personal attitudes of the sultan, of the jurists who had his ear, and even of the *muḥtasib* about the role of women in society clearly served to direct the choices that were made. Such attitudes may have been widely shared in the population or may have been limited to men in positions of authority, such as these, suggesting that personal beliefs can significantly affect the process of putting law into action.

5

Managing Christians and Jews

For the Christians and Jews living in Mamluk Egypt, their own religious institutions provided a major source of social structure and stability. Many aspects of daily life, ranging far beyond devotional practices, were governed by their own religious laws and customs as interpreted and enforced by the leadership of those communities.[1] Since the authority of the Mamluk rulers extended to everyone in the sultanate, Jews and Christians were governed by two distinct forms of authority. As influential as communal leaders may have been, the ruling sultan and his apparatus carried the authority of physical power and force, and controlled matters such as the existence of houses of worship, the public appearance of non-Muslims, and their payment of taxes to the treasury.

The events described in this chapter took place in the larger context of tense relations between non-Muslims and Muslims, and many modern scholars have concluded that the Mamluk era was more difficult for non-Muslims in Egypt than previous centuries had been.[2] Hostility directed towards non-Muslims typically involved Coptic Christians. The Copts shared a religious affiliation with the Crusaders (even as Muslims often did not distinguish the Christianity of the Europeans from that of the Copts), who threatened Syria and Egypt.[3] But the antagonism was driven by social and economic factors more than explicitly religious ones. Some Christians served the sultan as scribes or in other capacities and thus enjoyed social and financial benefits that angered some Muslims.[4] Sometimes Muslim Egyptians would appeal to the sultan to act against non-Muslims, and when he did, it was typically during a crisis, when cracking down on non-Muslims served some larger political or social goal. Anger toward Copts and, on occasion, toward Jews also manifested itself as direct action by the population. The Jewish commu-

[1] The ways in which Christians (specifically, Copts) and Jews regulated their own communities are not the topic here, but a study of Christians and Jews in the fullest sense must include the communities' own religious rules and social norms. For this approach to the study of Ottoman Egypt, see Armanios, *Coptic Christianity in Ottoman Egypt*. Volume two of S. D. Goitein's *A Mediterranean Society* focuses on Jewish communal organizations and institutions.

[2] According to Norman Stillman, "with the sole exception of the persecutions under the mad Caliph al-Ḥākim between 1007 and 1021, when churches and synagogues were closed or demolished and the sumptuary laws of *ghiyār* (differentiation) were vigorously enforced, the heterodox Ismāʿīlī Fāṭimids showed relatively more tolerance toward their non-Muslim subjects than did most Islamic rulers." Stillman, "The Non-Muslim Communities: The Jewish Community," 201. See also Cohen, "Jews in the Mamlūk Environment," 425.

[3] Wilfong, "The Non-Muslim Communities: Christian Communities," 195.

[4] Northrup, "Muslim-Christian Relations During the Reign of the Mamluk Sultan al-Manṣūr Qalāwūn, A.D. 1278–1290," 254.

nity encountered less difficulty than Christians in general, and in some cases, Christians tried to pose as Jews in order to traverse the city streets more safely.[5]

When the sultan or the *muḥtasib* acted against Jews and Christians, it was usually under the banner of enforcing the Pact of ʿUmar, a set of norms for public behavior that supposedly had been agreed upon by the second successor to the Prophet, ʿUmar, and a Christian community in newly conquered Syria.[6] The pact takes the form of a letter from these Christians, in which they requested security from ʿUmar in return for a promise to comply with conditions that they listed. ʿUmar agreed with the request (and added an additional condition in the "amendment clause" and two more in the "confirmation clause"); as a result, they became known as *ahl al-dhimma* or *dhimmī*s, meaning protected people, since the pact provided them certain protections in exchange for their compliance with its conditions.[7] No single document clearly identified as the original pact exists, but it was copied in different forms into many types of writings, including legal treatises and chronicles, from which Mark Cohen has compiled a standard version.[8]

[5] For example, in the events of 721/1321 involving Christians but not Jews, discussed in Case 5.1, some Jews rented their yellow turbans to Christians so they could go out of their homes safely, disguised as Jews. Al-Maqrīzī, *Kitāb al-Sulūk*, 2:227. One significant event involving a Rabbanite synagogue in Fustat, which had repercussions for Christian communities also, took place in 845/1442. It began with the Shāfiʿī and Ḥanafī judges and the *muḥtasib* going to the Jewish synagogue in Qaṣr al-Shamʿ, where they found a recently restored pulpit (*minbar*) that had thirteen steps. Upon inspection, they found that the step upon which the preacher would stand contained inscriptions of the words Muḥammad and Aḥmad. The judges decided that the *minbar* should be removed, and the *muḥtasib* oversaw that task. This in turn prompted further investigations, in which the *muḥtasib* was not reported to have participated, of other Christian and Jewish houses of worship, and led to the reimposition of the Pact of ʿUmar on these communities. (The reports did not specify that this was the *muḥtasib* of Cairo, but this must have been the case, the *muḥtasib* of Fustat by this time having become a position that the chroniclers ceased to mention for the most part.) Since the *muḥtasib* was involved only briefly at the beginning of this event and only to remove the *minbar*, it is not examined in this chapter, but a full study of Christians and Jews in the Mamluk period would need to take it into account. Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 4:186–197; al-Sakhāwī, *Kitāb al-Tibr*, 1:68–108. Mark Cohen has discussed this event in detail, including the related document from the Geniza collection, which shows how the Jewish community responded internally. Cohen, "Jews in the Mamlūk Environment."

[6] Cohen, "What Was the Pact of ʿUmar?," 100.

[7] Ibid., 100, 108. Procedurally, ʿAbd al-Raḥmān b. Ghanm, a judge whom ʿUmar had sent to Syria, acted as intermediary with the Christians.

[8] Mark Cohen studied about thirty examples of the pact to formulate a version that contains the provisions most common to all of the versions. Ibid., 105. He relied in particular on *Sirāj al-mulūk* by the Andalusian Mālikī scholar al-Ṭurṭūshī (d. 1126), of which there are at least four Arabic editions. Ibid., 104 n. 16. Whether this pact actually dates back to ʿUmar's rule has been debated. Some scholars who have studied its various versions agree that it projected later practices onto ʿUmar as one of the most esteemed early Muslims. As the second successor to the Prophet, he did preside over expansion and conquest and negotiated with communities that surrendered to the Muslims. Ibid., 101. Mark Cohen concluded that the "Pact of ʿUmar" was already known as such by the middle of the ninth century and demonstrated that by the beginning of the tenth century so many versions were circulating that one author from that period undertook to analyze their differences. Ibid., 116. The terms of the pact do seem to reflect the concerns of the earliest conquests, when the goal was to protect the identity of the Arab conquerors, who were very much in the minority at that time. According to this theory, the provisions that later seemed humiliating were actually concerned only with keeping identities separate. From this point of view, ʿUmar might well have wanted to prevent other groups from changing the style of their clothing or imitating the dress and habits of Muslims. Ibid., 102.

The pact's actual provenance is less germane for purposes here than the fact that the *muḥtasib* manuals include versions of it that contain some additions to the standard set of conditions. Further, doctrinal books, the *muḥtasib* manuals, and chronicles all refer to the pact as the basis for the obligations of religious minorities living in territory ruled by Islam (*dār al-islām*).[9] And, when several of the *muḥtasib*s in the Mamluk period took action regarding *dhimmī*s, their orders involved language that tracked the language in the manuals and in turn the pact.

Case 5.1. Destroying a church

The events leading to the destruction of a church in 780/1378 began with a Sufi complaining to Sultan al-Ashraf Shaʿbān (r. 1363–77) about a church in the area of Abū al-Nimris in Jīza (Giza), on the west bank of the Nile across from Fustat (see Map 1.3).[10] The Sufi had heard the loud sound of the wooden clapper (*nāqūs*)[11] signaling the time for prayer in the church. He was told by local Muslims that the Christians beat these clappers during the Muslims' Friday prayers, with the result that the prayer leader's sermon could not be heard. The sultan did not respond to the Sufi's complaints. Subsequently, the Sufi went to the Hijaz, returning to Cairo after a lengthy period, bearing documents showing that he went to the Prophet's gravesite and appealed for his intercession with God to bring about the church's destruction.[12]

Later, during the reign of the young Sultan al-Manṣūr ʿAlī (r. 1377–81), the Sufi went to Grand Amir Barqūq with the above-mentioned documents to present his case. The child sultan had promoted Barqūq to this position of responsibility over all of the military, and from it Barqūq effectively ran the sultanate while laying his plans to move onto the throne. Barqūq ordered the *muḥtasib* of Cairo, Jamāl al-Dīn al-ʿAjamī, to go to the church and investigate the matter. Upon hearing the complaints of the neighbors, al-ʿAjamī closed the church, and returned to Barqūq and told him what he had done. The Christians defied the closure, however, and reopened their church. The *muḥtasib* recommended to Barqūq that the church be destroyed. He agreed, and it was.[13]

In 780/1378, church destructions were already a serious matter. A wave of violence between Muslims and Christians occurred in 721/1321 and was reported by the chroniclers in terms that are clearly hyperbolic. One chronicle reports that

[9] See, for example, the rules for *dhimmī*s in "Ahl al-dhimma," *al-Mawsūʿa al-fiqhiyya*, 7:120–139, which are presented as derived mainly from the pact.

[10] A. S. Tritton refers to this as the Church of George, which might also be called St. George. Tritton, *The Caliphs and Their Non-Muslim Subjects*, 59.

[11] "A board beaten with a stick or hammer, taking the place of bells in eastern churches." Ibid., 5 n. 1.

[12] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:340; idem, *al-Khiṭaṭ*, 4:1048. In *al-Khiṭaṭ*, al-Maqrīzī added his assessment that Sultan al-Ashraf Shaʿbān did not act on the initial complaint because Christians had significant influence in his administration. Perhaps this has some explanatory value, or perhaps al-Maqrīzī was taking the opportunity to criticize Christians in the bureaucracy, which was a common complaint in this period (see Case 5.3 below).

[13] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:340–341; Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:177. In *al-Khiṭaṭ*, al-Maqrīzī stated that the church was rebuilt at some later date. A. S. Tritton refers to this as the Church of Mark, and says that it, too, was destroyed. Tritton, *The Caliphs and Their Non-Muslim Subjects*, 59.

600 churches were destroyed in one hour. Soon thereafter, fires broke out in Cairo and Fustat, and Christians were accused of starting them as an act of retaliation. Some Christians were arrested, but the fires continued. Eventually, Sultan al-Nāṣir Muḥammad faced an angry crowd of 20,000 people who wanted the Christians punished. The sultan responded strictly, at first declaring the permissibility of killing any Christian who wore a turban or who rode astride an animal, and then announcing restrictions on their dress and behavior.[14]

Returning to the church that was destroyed due to the clappers, one of the promises made by the Christians, as recorded in the Pact of ʿUmar, was to beat the clappers very quietly. But who or what determined that the *muḥtasib* was responsible for ensuring compliance with the pact's conditions? The sultan's appointment document for the *muḥtasib* does not mention regulation of non-Muslims. The *muḥtasib* manuals serve as an important link because they present their own versions of the pact and direct the *muḥtasib* to enforce it. Al-Shayzarī and Ibn Bassām's chapters on the *ahl al-dhimma*, which are nearly identical, include this statement:

> They should be prohibited from displaying intoxicants and pork, reciting the Bible or Torah openly, beating clappers, openly celebrating their holidays, and being loud at their funerals. ʿUmar b. al-Khaṭṭāb imposed all of this on them as a condition . . . , and the *muḥtasib* should watch over their affairs and force them to comply.[15]

By stating that Christians should not beat clappers at all, these two manuals take a stricter position than that of the pact itself.[16] Yet neither al-Shayzarī nor Ibn Bassām mentioned a remedy for violation. It is by no means clear from their manuals that the *muḥtasib*'s response to the sound of church clappers should be the destruction of the church in which the Christians who beat the clappers worship.

Ibn al-Ukhuwwa's chapter on *ahl al-dhimma*, which is much longer than that of the other two manuals, states that the *muḥtasib* is responsible for keeping an eye on the *ahl al-dhimma* and enforcing the restrictions upon which they agreed long ago: "He should not allow them to depart from any of [the restrictions], whether in speech or action, and should enforce what they promised to ʿUmar b. al-Khaṭṭāb."[17] At this point, Ibn al-Ukhuwwa repeated a version of the pact that is very similar to the

[14] Specifically, he announced that Christians may wear only blue turbans, that they should not ride a horse or mule, that they may only ride a donkey sidesaddle, that they must wear bells around their necks when entering the bathhouses, and that they should not seek to resemble Muslims in their dress. The sultan also expelled them from his administration and closed more churches and monasteries. Al-Maqrīzī, *Kitāb al-Sulūk*, 2:216–227. The event as described by al-Maqrīzī is translated in Tritton, *The Caliphs and Their Non-Muslim Subjects*, 61–77. These kinds of restrictions are discussed below in Case 5.2.

[15] Al-Shayzarī, *Nihāyat al-rutba*, 106–107; Ibn Bassām, *Nihāyat al-rutba*, 207–208.

[16] A. S. Tritton refers to some other examples of covenants and treaties between Muslim rulers and Christians, and they contain a range of views of the permissibility of Christians using clappers. He refers to one in which Christians promised not to beat the *nāqūs* before the call to prayer, and another in which Christians promised to beat the clapper inside the church only. Tritton, *The Caliphs and Their Non-Muslim Subjects*, 9–11. In a third, which may be merely an opinion by an early Muslim scholar, Christians were not allowed to beat the *nāqūs* at all in towns that the Arabs established. Ibid., 37. See also other examples that Tritton provides at 100 and 102.

[17] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 40.

standard one compiled by Mark Cohen, starting with the beginning of what Cohen calls the "Letter to ʿUmar b. al-Khaṭṭāb from the Christians":

When you came against us, we asked you for a guarantee of protection for ourselves, our offspring, and our property on the condition that:
We shall not build in our cities or around them churches . . . nor repair by day or night those that have fallen into ruin or those that are in the quarters of the Muslims;
We shall provide three days' food and lodging to Muslims who pass by us;
We shall not give shelter in our churches or homes to a spy nor hide him from the Muslims;
We shall not teach our children the Quran;
We shall not openly show our religious law;
We shall not call anyone to our religion;
We shall not prevent any of our relatives from embracing Islam if they so desire;
We shall show deference to the Muslims and shall rise from our seats when they wish to sit;
We shall not attempt to resemble them in any way with regard to their dress, as, for example, with the conical cap, the turban, footwear, or parting of the hair;
We shall not speak as they do, nor name with their names, nor adopt their honorific bynames (sing. *kunya*);
We shall not ride on saddles;
We shall not wear swords or bear weapons of any kind or even carry them on our persons;
We shall not engrave Arabic inscriptions on our seals;
We shall not sell intoxicants (*khumūr*)[18] nor give them to anyone to drink;
We shall clip the forelocks of our heads;
We shall put the *zunnār* [a distinctive belt] around our waists;
We shall not display our crosses or our books anywhere in the roads or markets of Muslims;
We shall only beat our clappers in our churches quietly;
We shall not raise our voices in our services anywhere near the presence of Muslims;
We shall not raise our voices in funerals;
We shall not display lights on any of the roads of the Muslims or in their markets;
We shall not appear on Easter or Palm Sunday;
We shall not bury our dead near the Muslims;
We shall not take slaves who have been allotted to the Muslims;
We shall not build our homes higher than theirs.[19]

[18] Sing. *khamr*. For a discussion of the meaning of this term, see Chapter 4.

[19] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 40–41. Emphasis added. Translation based on Cohen, "What Was the Pact of ʿUmar?," 106–108. The general understanding is that ʿUmar read this letter and responded with acceptance and the addition of an amendment. The manual tracks this, adding after the letter the "amendment clause" whereby ʿUmar imposed upon them the stipulation, "We shall not strike any Muslim." Then the Christians added the "forfeiture clause," whereby they agreed that they would lose protection if they violated the conditions in any way. Finally, still tracking the standard version as determined by Cohen, the manual reports ʿUmar's response in his "confirmation clause," which added two more conditions to the Christians. The naming of these additional clauses is from Cohen, "What Was the Pact of ʿUmar?," 108. If Ibn al-Ukhuwwa's report had included only this information, he would have reproduced the standard version of the pact. However, he went further by adding an extra concept to the confirmation clause and by adding an additional list of stipulations to the end. The standard "confirmation clause" as reported by Cohen states: "They shall not buy anyone made a prisoner by the Muslims" and "whoever strikes a Muslim deliberately shall forfeit the protection of this pact." Ibn al-Ukhuwwa added language to the second clause, stating that "whoever strikes a Muslim deliberately *or reviles him* shall forfeit the protection of this pact." Reviling is a broader concept than intentional striking and opens up the scope of the acts for which the Christians could lose their protection. The additional list of stipulations Ibn al-Ukhuwwa added is discussed below in Case 5.2.

Ibn al-Ukhuwwa's rule on clappers allows for their quiet beating (as does the pact). This nuanced rule, which requires the *muḥtasib* to determine what is quiet, is consistent with the style of Ibn al-Ukhuwwa's manual, providing greater details on legal rules (and even points of disagreement) and discretion to the official. By contrast, if a *muḥtasib* followed the language of al-Shayzarī and Ibn Bassām, he would not have to decide whether the beating of clappers was done lightly, since all beating is forbidden in their view. What was the remedy for violations of these promises, according to Ibn al-Ukhuwwa? He wrote that the *muḥtasib* should rebuke and punish (*taʿzīr*) Christians and Jews who behave in inappropriate ways—that is, a punishment of the individual and not an action against the house of worship in which the violation took place. The pact—and likewise Ibn al-Ukhuwwa's manual—says that violation of its stipulations means that the Christians lose their protection from the Muslims. Without such protection, churches might be destroyed at will, although this is not explicit in the pact or the manuals.[20]

In addition to these rules, Ibn al-Ukhuwwa devoted a section of his chapter on *ahl al-dhimma* to churches and synagogues. The first line of the standard version of the pact (which Ibn al-Ukhuwwa repeated with some variation) states that the Christians promised the Muslims not to "build in our cities or in their vicinity new monasteries, churches, hermitages, or monks' cells, nor shall we repair" them.[21] Ibn al-Ukhuwwa elaborated upon this provision as follows:

> They are forbidden from establishing synagogues and churches in the land of Islam (*dār al-islām*). ʿUmar ordered the destruction of each church that was built anew after the [first year in the Islamic calendar, 622 C.E.] and the only ones remaining were those that predated Islam. . . . The Copts cooperated with regard to their churches in Egypt and destroyed some of them, so that the only ones left were those that pre-existed ʿUmar's dispatch [of Muslims to Egypt]. If some of them fall into ruin, they are not forbidden from restoring them; one scholarly opinion forbids this because it is like establishing [a new one]. It is said in *al-Ḥāwī* [of al-Māwardī] and according to [the author Ibn al-Ukhuwwa himself] that [the *muḥtasib*] should examine its ruins, and if it is completely in ruins, they are forbidden from rebuilding it. If it is not completely in ruins, then they may restore it.[22]

Ibn al-Ukhuwwa thus allowed the *muḥtasib* to make decisions about church repair and restoration, but did not give him permission to destroy a church whose existence seems otherwise acceptable. Indeed, he conceded that the only existing churches in his time predated Islam's arrival in Egypt and thus were permissible. Given the very careful way in which he articulated the rules that protect existing houses of worship,

[20] Destroying the house of worship was the action taken regarding the synagogue with the blasphemous pulpit (discussed in n. 5, above), in which Sultan Jaqmaq delegated Ibn Ḥajar al-ʿAsqalānī to conduct a meeting with Jewish and Christian leaders. The Pact of ʿUmar was re-imposed upon these leaders after they said that they had no knowledge of it, but what was imposed focused only on the prohibition against repairing their houses of worship and against giving Muslims wine, whether by sale or otherwise. The stated penalty for violation was the destruction of the house of worship in which the wrongful act took place. Al-Sakhāwī, *Kitāb al-Tibr*, 1:108. While clappers were not discussed, this event does indicate that destroying the church for a violation was an approach accepted by some Muslim officials.

[21] Cohen, "What Was the Pact of ʿUmar?," 106.

[22] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 43.

the conclusion that the sound of clappers may lead to destruction of the church is a significant extension of the doctrinal rules as he presented them.

Stricter and more aggressive approaches to houses of worship can be found in writings produced in the Mamluk period. The Fustat *muḥtasib* Ibn al-Rifʿa (d. 710/1310), a major Shāfiʿī scholar, wrote a treatise on the destruction of churches and synagogues in which he discussed the status of existing churches in Mamluk Egypt. The text, entitled *al-Nafāʾis fī adillat hadm al-kanāʾis*, focuses on the rules that govern the status of churches and synagogues in Muslim lands.[23] Ibn al-Rifʿa asserted that churches and synagogues in Muslim territory, and in particular in cities built by Muslims, such as Cairo, are presumed unlawful unless proven otherwise. He compared Christians and Jews to plaintiffs in a lawsuit: they have the burden of proving that their house of worship complies with all applicable agreements in order for it to remain open. The Muslims do not have to prove that a church or synagogue is illegal in order to destroy it.[24]

Ibn al-Rifʿa's logic would have given the grand amir and the *muḥtasib* al-ʿAjamī some support for destroying the church. In addition to the specific complaint relating to the clappers, the more general charge could be made that the Christians had not established the right of the church to exist. But the location of the church in Giza, a town that predated the Muslim conquest of Egypt, might have put it in a different legal category than a church built in Cairo. Ibn al-Rifʿa asserted that non-Muslims must prove that they are in compliance with all aspects of any pact that may have existed; one component of such compliance, as stipulated in the standard version of the pact and the manuals, is refraining from beating clappers, or doing so only lightly. A violation of this one provision, in Ibn al-Rifʿa's view, could constitute sufficient grounds for destruction. The strict approach of his treatise shows that those who favored destruction of churches and synagogues could find a measure of scholarly backing.[25]

From the perspective of the Christians whose church was destroyed, this *muḥtasib*, Jamāl al-Dīn al-ʿAjamī, who investigated and then facilitated the destruction, posed a new threat. This was not angry mob action; it was a calculated decision, with the *muḥtasib* acting largely as an instrument of the sultan rather than as an independent actor. Indeed, al-ʿAjamī's connection with the Mamluks was his main, although not only, credential. Mamluk-era biographers emphasized

[23] Only one copy of this manuscript appears to be extant, and it is in the Azhar manuscript collection in Cairo. This manuscript was copied in 700/1300 (ten years before the death of Ibn al-Rifʿa). Seth Ward discusses this treatise although he does not cite it directly. Ward, "Ibn al-Rifʿa on the Churches and Synagogues of Cairo." See also Ward, "Construction and Repair of Churches and Synagogues in Islamic Law: A Treatise by Taqī al-Dīn ʿAlī b. ʿAbd al-Kāfī al-Subkī"; idem, "Taqī al-Dīn al-Subkī on Construction, Continuance and Repair of Churches and Synagogues in Islamic Law." For the broader topic of treatises, speeches, and other writings directed against Christians, see Perlmann, "Notes on Anti-Christian Propaganda in the Mamlūk Empire."

[24] Ibn al-Rifʿa, *al-Nafāʾis*, fol. 15a.

[25] Further, some evidence of historical practice prior to the Mamluk period involves the destruction of a church because of the clappers, although no evidence indicates that the Mamluk sultan was aware of these examples. The caliph al-Walīd b. ʿAbd al-Malik (d. 715) heard a noise while on the pulpit and when he learned that it was the clappers from a church, he had the church destroyed. Tritton, *The Caliphs and Their Non-Muslim Subjects*, 104.

his adeptness in serving in the system over any educational or intellectual achievements. Although he often was caught up in political disputes among the amirs, he was well regarded by the people and the leadership and continued to be reappointed when the situation called for an effective official.[26]

What was the sultan's larger aim in destroying this church? The reports suggest that he was not interested in stopping the clappers or in reaching a resolution that would have allowed the church to remain open. Nor were the particular Christians responsible for the clappers subjected to physical punishment, a result that might have caused physical suffering to a few individuals but allowed the church to remain open. Rather, Grand Amir Barqūq, acting on behalf of the young sultan, was making clear to the Muslim population that he would take a harsh approach regarding complaints against Christians, distinguishing himself from the previous sultan, al-Ashraf Shaʿbān, who took no action when this church was first brought to his attention, according to the report. As for the Christians, they had little room to argue or engage in a formal legal response. After their failed attempt to reopen the church, they had to accept the actions of the *muḥtasib* and sultan because they simply could not prevent the destruction. They were not always so limited in their ability to resist, however, as the next case shows.

Case 5.2. Public dress and the Pact of ʿUmar

Ṣadr al-Dīn b. al-ʿAjamī's crackdown on vices during the plague in 822/1419 (Case 4.2) contained one additional action that calls for discussion in this chapter. He ordered Christians and Jews to narrow the width of their sleeves, wear shorter turbans (such that the length of the fabric forming the turbans did not exceed seven *adhruʿ*, or approximately three and a half meters),[27] and wear bells (*jalājil*) around their necks when entering the bathhouses. He ordered the women to wear colored buttons according to their religion—yellow for Jews and blue for Christians. These announcements made the Jews and Christians very anxious, and they followed some of the orders but not others.[28]

The Pact of ʿUmar includes a promise not to imitate Muslim dress: "We shall not attempt to resemble them in any way with regard to their dress, as, for example, with the conical cap, the turban, footwear, or parting of the hair."[29] The only affirmative undertaking regarding dress is the statement that "We shall put the *zunnār* [a distinctive belt] around our waists."[30] This part of the pact evidences a concern with Christians trying to blend in with the Muslims rather than an effort at imposing new distinguishing markers, since the *zunnār* was not created by Muslims, but Christians wore it well before the existence of Islam.[31] Further, the *zunnār*

[26] See his biography in Chapter 2.
[27] Allouche, *Mamluk Economics*, 88. For a discussion of the significance of sleeve width, see Mayer, *Mamluk Costume*, 22, 33, 69, and the plates at the end.
[28] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:486.
[29] Cohen, "What Was the Pact of ʿUmar?," 107.
[30] Ibid.
[31] Cohen, *Under Crescent and Cross*, 62.

had been considered an "insignia of high status" in the Byzantine period, and forcing its removal at the time of the pact's origins would have been considered an act of humiliation.[32]

While the pact does not assign to Christians affirmative dress obligations beyond the belt, the manuals do, and al-Shayzarī and Ibn Bassām both ordered the *muḥtasib* to ensure that Jews and Christians wear specific markers to distinguish themselves from Muslims (and from each other). Similar to the *muḥtasib*'s announcement in this case are the rules of these two manuals:

> They must wear distinctive clothing. If he is a Jew, he should wear a red or yellow cord on his shoulder; if a Christian, then he should wear the *zunnār* around his waist and hang a cross around his neck. A woman [in the bathhouse] should wear two clogs, one black and one white. When one of the *ahl al-dhimma* goes to the bath, he must wear a ring of iron, copper or lead around his neck to distinguish himself from others.[33]

Ibn al-Ukhuwwa was even more specific than the other two manuals in his rules regarding clothing:

> [The men] should wear clothes other than those of Muslims in order to be known by them, with the color yellow preferred for Jews for their headcoverings. The Christians wear the *zunnār*. . . . When entering the bathhouse, they should wear around their necks a ring of steel or copper to be distinguished by it. . . .
> The women should wear the *zunnār* under the mantle (*izār*) and over the robes (*thiyāb*) so that the outlines of their bodies are not revealed and their heads are uncovered. Another opinion is that the *zunnār* should be on the outside of the *izār*, like [the *zunnār* worn by] men. When entering the bathhouse, they should wear a ring around their necks and one of their clogs should be black and the other white to distinguish them from others.[34]

After completing the list of the rules that should be imposed, he added a commentary: "If ʿUmar could see the Jews and Christians in our time!" He then listed all of their violations, such as dwelling in homes taller than the homes and mosques of Muslims, using Muslim names, dressing better than Muslims, or riding their mounts. He ended the list by instructing the *muḥtasib* to pay attention to these matters and punish any infractions.[35]

The *muḥtasib*'s orders in this case regarding dress largely corresponded to the details of the Mamluk-era manuals. Although colored buttons for women are not mentioned in the manuals, they do indicate that different colors should be associated with Jews and Christians to distinguish them from one another (in addition to marking their status as non-Muslims). The way that the manuals present these rules on affirmative dress obligations intertwined with the *zunnār* requirement from the pact—indeed, not differentiating clearly between the pact's conditions and these additional rules—results in the blending of the new rules with those of the pact. Perhaps this reflected a prevailing belief that the pact had expanded to include these

[32] Ibid., 63.
[33] Al-Shayzarī, *Nihāyat al-rutba*, 106–107; Ibn Bassām, *Nihāyat al-rutba*, 207–208.
[34] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 41–42.
[35] Ibid, 42–43.

markers of identification or perhaps a belief that they were in the pact originally. In this case, the *muḥtasib* may have believed that he was merely enforcing the pact (and the requirement that non-Muslims avoid resembling Muslims, such as with the turban), and not adding any new requirements. At the same time, there was no mention of the *zunnār* in the *muḥtasib*'s announcement, suggesting either that Christians were wearing it such that it did not have to be enforced anew or that it had ceased to be a distinctive marker required by the Muslim authorities and simply was no longer worn.

The existence of these additional requirements in the manuals does not, of course, mean that they were enforced uniformly. Rather, it seems the case that in the Mamluk period, lack of enforcement was the norm, with occasional renewed efforts to impose these rules, as in this case, prompted by other events in a way that was even predictable.[36] Here, the backdrop of a new wave of the plague at the time of these events in 822/1419 was raised in Case 4.2, where the *muḥtasib*'s actions regarding wine, hashish, and prostitution were discussed. The behavior of Jews and Christians may seem out of place in the list of wrongdoings that the *muḥtasib* focused on when the others bordered on the elements of *ḥadd* crimes, the most serious in Islamic law, but that is the point of this case—the *muḥtasib* was asserting that the significance of Jewish and Christian dress rose to the level of the other wrongful behavior that God was punishing. By acting on the publicly visible issue of the clothing of Jews and Christians, the sultan and *muḥtasib* could assure the public that all measures were being taken to stop the plague. Significantly, the wrongdoings that the *muḥtasib* pursued against the backdrop of the plague did not include anything the sultan might have done, and the attention to certain actors in society, such as prostitutes, Jews, and Christians, makes it clear that anything that might have angered God came from outside the Citadel. If the sultan was guilty, it was only in the failure to enforce the rules.

This *muḥtasib*'s tactic was to announce that dress restrictions would be strictly enforced and that the days of leniency were over, and his orders seem to come from the rules of the manuals with some modifications. But in terms of the effect of this particular crackdown, the chronicle report states forthrightly that the effort to modify the dress and public appearance of Christians and Jews was not very successful: "They did some of what was mentioned and not the rest."[37] The order made the *dhimmī*s "anxious," but they were not completely cowed into submission. They seem instead to have made decisions about which rules could be safely neglected and which were meant to be taken seriously. Like the women seeking front-row seats to watch the caravan in the previous chapter, those regulated here did not comply fully. Perhaps they, too, were aware that this round of enthusiastic enforcement was more to meet the needs of the moment than to

[36] Many other examples from the Mamluk period involved the imposition of dress and behavior restrictions on Jews and Christians, although not explicitly involving a *muḥtasib*. See also examples cited in Tritton, *The Caliphs and Their Non-Muslim Subjects*, 75, 121, and 123.

[37] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:486.

regulate them in a uniform and permanent manner. The Christians apparently had enough experience to know which aspects of the rules they had to follow, and for how long, and which ones they could ignore without repercussion. Some rules, however, were too strictly enforced to ignore, as seen in the next two cases.

Case 5.3. The problem of hiring Christians

Later in 822/1419, the *muḥtasib* of Cairo Ṣadr al-Dīn b. al-ʿAjamī took an even greater initiative against Christians, this time getting the sultan involved. He began by telling Sultan al-Muʾayyad Shaykh that Christians were ignoring the rules for their dress and public behavior. His impassioned speech persuaded the sultan that no Christian should hold a position in his administration or in the service of amirs. The sultan summoned al-Akram Faḍāʾil, a Christian who had been serving as a scribe, beat him, and then had the *muḥtasib* parade him around Cairo ignominiously (*tashhīr*), naked. The *muḥtasib* called out: "This is the punishment for any Christian who takes a position in the *dīwān* of the sultan." The unfortunate scribe was then thrown into prison.

As a result, many Christians ceased to serve in the administration and remained at home. They made their turbans smaller and their sleeves narrower, and the Jews did the same. They refrained from riding donkeys in Cairo; if they rode donkeys outside of town, they did so sidesaddle. (These actions were apparently taken without a specific instruction at that time.) One group of Christian scribes, however, did all they could to avoid compliance with these measures, but when they were not able to resume their previous behavior, a number of them "acted in conformity with the outward signs of Islam" and started riding donkeys and horses and taking other privileges of Muslims.

The *muḥtasib* then announced in the streets of Cairo and Fustat that Jews and Christians could pass through Cairo only on foot. Outside of Cairo, they could ride donkeys, but only sidesaddle. They should wear small turbans and robes with narrow sleeves. Christian women should wear a blue button and Jewish women a yellow one. When entering the bathhouses, they should wear a bell around their necks. Both communities were highly disturbed by these rules and tried to get the order abrogated, but without success. Female bathhouse attendants beat a group of women for violating these rules. Thereafter, many of them refrained from entering the bathhouses and from going into the markets.[38]

This incident began with concern over the employment of Christians in the sultan's administration and then progressed to their public dress and behavior. The scribe was made an example of and the *muḥtasib* paraded him ignominiously (*tashhīr*), which was intended to punish him and deter others. The appointment decree explicitly tells the *muḥtasib* that *tashhīr* is one of the means of punishment he should use. In the discussion of how to inflict *tashhīr*, Ibn al-Ukhuwwa specified that the *muḥtasib* may strip the offender of his clothing so that only his *ʿawra* (for a

[38] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:493–495; Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 14:81–84.

Muslim man, the area between the navel and knees) is covered and then parade him throughout the town and denounce him and his crime.[39] In this case, the report states that the scribe was naked, but it may be implied that his *ʿawra* was still covered.

Throughout the Mamluk period, the issue of Christians (and non-Muslims in general) serving the state remained controversial. On several occasions, the sultan dismissed the Christians in his employ, sometimes due to pressure from Muslim officials, but he usually brought them back when the heat of the moment had passed.[40] The pact did not include any mention of non-Muslims working for Muslims, presumably because it dealt only with what non-Muslims promised to do or refrain from doing themselves, and hiring was the prerogative of Muslim employers.

Prior to the *muḥtasib*'s announcement regarding riding, sleeves, turbans, buttons, and bells, the Christians acted preemptively. After the treatment of the scribe was used as a warning to others, Christians refrained from going to work and also made their turbans smaller and the sleeves of their robes narrower, as if they knew that this rule was going to be enforced anew. The Jews did the same, even though they were not the target of the sultan's and *muḥtasib*'s anger. These actions suggest that non-Muslims were familiar with a cycle of enforcement in which certain rules were imposed, neglected, and then re-imposed when circumstances demanded a show of control over the *dhimmī*s' behavior. And, indeed, the *muḥtasib* did go on to announce a set of rules that included turbans and robes. This pattern seems to have been regular and predictable enough that the non-Muslims knew how and when to dress in public in order to prevent confrontations with the Muslim authorities.

When some Christians were not able to return to their positions as scribes, they took an alternative path in order to preserve their jobs: a number of them "acted in conformity with the outward signs of Islam" and started riding donkeys and horses and acting like Muslims. This particular phrasing indicates that the historians who used it doubted the Christians' true intentions in their conversions to Islam. Suspicion of the religious integrity of converts to Islam was widespread, and conversions, especially those of Christians, were frequently described as a pretense, designed to avoid the rules concerning employment, dress, and behavior, as in this case.[41]

What stands out from this report is that the Christians and Jews resisted the sartorial and behavioral rules and the ban on employment. Some simply avoided the situations that would require their conformity with the dress and behavior codes: they refused to go to the baths and women refrained from going into the

[39] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 193–194. The concept of *ʿawra* is discussed in Case 6.3. Ibn al-Ukhuwwa recommended *tashhīr* for repeat offenders, indicating that it is a severe form of *taʿzīr*. He added that the perpetrator's head may be shaved (although not the beard) and that there was disagreement among the jurists over the possibility of blackening the face. The person should be paraded while sitting backwards on the animal. Ibid., 194. See also Lange, "Legal and Cultural Aspects of Ignominious Parading (*tashhīr*) in Islam."

[40] See cases discussed in Little, "Coptic Converts to Islam During the Baḥrī Mamluk Period," 264–265; Northrup, "Muslim-Christian Relations During the Reign of the Mamluk Sultan al-Manṣūr Qalāwūn, A.D. 1278–1290," 253–259.

[41] El-Leithy, "Coptic Culture and Conversion in Medieval Cairo, 1293–1524 A.D.," 140–216.

markets. The reports do not explain whether the bathhouses or the merchants suffered a noticeable decline in business as a result, as they did in Case 4.4, when the women were forced to stay inside. This was not a tenable permanent state of affairs, however, and while the report does not state so explicitly, it is reasonable to conclude that when the intense scrutiny of the moment passed, the Christians and Jews returned to their usual dress and public behavior. Conversions, however, profoundly and usually permanently affected the non-Muslim communities, particularly when economic elites such as those working in the sultan's administration converted. Once Muslims, they no longer assisted their former co-religionists with payment of the *jizya* tax (discussed in the next case), and the inability to pay in turn led to conversions of poorer non-Muslims.[42]

In terms of how service in the sultan's administration was affected, the evidence is also not clear. This case took place after the major wave of Coptic conversions to Islam in the eighth/fourteenth century, but obviously there remained an unknown number of Christians in Egypt after that time. Some of those dismissed here may have converted in order to retain employment, although conversion did not necessarily mean complete acceptance as a Muslim. Some may have managed to return to their positions without converting, but this was not the last time that Christians in the administration were criticized and dismissed, creating ongoing incentives for conversion.

Case 5.4. Payment of the *jizya* tax

In the month of Ramadan in 815/December 1412, in the beginning of the reign of Sultan al-Mu'ayyad Shaykh, the Jews and Christians were gathered next to the al-Ḥākim mosque in Cairo. In attendance were the preacher of the Ibn Ṭūlūn mosque,

[42] Donald Little found that large numbers of Copts converted to Islam in the early Mamluk period, but:

> Not, however, because the Mamluks were themselves advocates of conversion, but because the Muslim masses of Cairo and other cities resented the blatant economic prosperity and government influence which many Copts seemed to enjoy. From time to time this resentment led to violence against the Copts, which threatened the social, even political, equilibrium of the Mamluk state. To curb the violence and to maintain social equilibrium, the Baḥrī Mamluk sultans adopted measures, including re-promulgation of the Covenant of ʿUmar and restrictions against employing Copts in the bureaucracy; these measures led cumulatively to widespread conversion, to the extent that by the middle of the fourteenth century the Copts had been reduced to a small minority in Egypt.

Little, "Coptic Conversions to Islam During the Baḥrī Mamluk Period," 263. His information came from chronicles of the years 1293–1354. More recently, Tamer El-Leithy surveyed the range of possible reasons for conversion, focusing on elite Christians in the bureaucracy and poor Christians whose ability to pay the *jizya* tax most likely depended on the charity of a Christian patron or the community generally. "In light of this background of increased jizya-dependence . . . and the central role of the elites in bearing its burden, we can now better grasp the veritable domino effect of elite conversions." El-Leithy, "Coptic Culture and Conversion in Medieval Cairo, 1293–1524 A.D.," 52. He also clarified that, individual conversions aside, there was a single wave of Coptic conversions to Islam that took place in the early eighth/early fourteenth century. Ibid., 23.

the military judge (*qāḍī ʿaskar*), and Ṣadr al-Dīn b. al-ʿAjamī, the *muḥtasib* of Cairo. The names of the Christians and Jews present were written down in order to take the tax imposed on non-Muslims (*jizya*) from them according to their means. Previously, a total amount was due from the community as a whole, which was approximately 30,000 *dirham*s a year. The three Muslim officials and the sultan undertook to collect the tax directly and individually from each Christian and Jew. The wealthy owed four *dīnār*s, those of middling financial means owed two, and the poor owed one.[43]

The *jizya* is a tax levied on non-Muslims as specified in Quran 9:29: "Fight those who do not have faith in God nor [believe] in the Last Day, nor forbid what God and His Apostle have forbidden, nor practice the true religion, from among those who were given the Book, until they pay the *jizya* tax out of hand, degraded."[44] The last two phrases, "out of hand" and "degraded," were the subject of particular attention by the jurists (as well as modern scholars), as discussed below. Most versions of the Pact of ʿUmar do not mention the *jizya*, presumably because it is mandated by the Quran and does not need to be restated in a document produced by humans.[45]

All three *muḥtasib* manuals contain a similar provision about the payment, instructing the official to take the *jizya* from the *dhimmī*s at the beginning of each year according to their social status and with the same payment scheme that was ordered in this case. Each manual makes the same statement about the mode of collection: "If the *muḥtasib* or his agent comes to collect the *jizya*, he should stand in front of the [Christian or Jew], slap him on the side of the neck, and say: 'Pay the *jizya*, unbeliever.' The *dhimmī* will take the money from his pocket and pay it with humility and submissiveness."[46] The manuals' description of how the *muḥtasib* should treat the *dhimmī* is generally consistent with the prevailing interpretation in all four Sunni schools of law, which specifies that the non-Muslim must pay the tax in person, and the jurists generally prescribed ways for the Muslim collector to convey a sense of insult and humiliation to the non-Muslim.[47]

In terms of who was supposed to pay the tax, jurists generally agreed that the tax is levied only on those who are male, adult, free, and mentally competent. Some excused the poor (with varying definitions) from payment.[48] The *muḥtasib* manuals

[43] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:247.

[44] Translation of Ali Quli Qara'i with minor modifications. Translations of this verse vary widely, mainly with regard to the final phrases that suggest how the tax is paid and the state of the non-Muslim at the time of payment, but this translation best expresses the way that the jurists generally interpreted the verse.

[45] Tritton, *The Caliphs and Their Non-Muslim Subjects*, 8.

[46] Al-Shayzarī, *Nihāyat al-rutba*, 107; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 45; Ibn Bassām, *Nihāyat al-rutba*, 208.

[47] Al-Shirbīnī, *Mughnī al-muḥtāj*, 6:70; al-Dasūqī, *Ḥāshiyat al-Dasūqī*, 2:202; *al-Fatāwā al-hindiyya*, 3:589; al-Buhūtī, *Sharḥ Muntahā al-irādāt*, 2:130. The Ḥanbalī al-Ḥujāwī warned the tax collector not to go to extremes with non-Muslims. Al-Ḥujāwī, *al-Iqnāʿ*, 2:45. This interpretive issue is reviewed briefly in Cohen, *Under Crescent and Cross*, 56, where citations can be found to a substantial body of secondary literature. For a discussion of the range of interpretations of the "out of hand" language in particular, see Rosenthal, "Some Minor Problems in the Qur'ân."

[48] "Jizya," *al-Mawsūʿa al-fiqhiyya*, 15:175–182.

state that the *muḥtasib* should collect the tax from the *dhimmī*s, without specifying age, gender, or other kinds of qualification.[49] The jurists largely agreed that the individual must pay the tax in person, rather than paying through an intermediary, such as the head of the religious community, in part to allow the collector to insult or otherwise make each non-Muslim taxpayer feel personally degraded.[50] The historical reports, however, do not suggest that conveying a sense of degradation was the motivating factor for gathering the individuals in this case. Rather, they indicate that the *muḥtasib* and other officials thought they could bring in more than the 30,000 *dirham*s that were collected the preceding year by taking it from them one by one. They may have thought that the Christian and Jewish communities as groups had been underpaying, and this event was to establish an accurate count of non-Muslims who were liable to pay the tax. The reports do not specify ages or even genders of those who were called to the mosque for this collection ceremony, although they suggest that Jewish and Christian women were not present.

Historical sources indicate that the tax was very burdensome. Despite the *fiqh* rule that the tax is only applicable on adults, nine- or ten-year-old boys could be considered responsible, giving poor fathers of large families a substantial bill to pay, and poverty did not necessarily excuse payment of the tax as a matter of practice.[51] S. D. Goitein found in the documents of the Cairo Geniza substantial evidence of the hardship it imposed on individuals. Any impression that the "sliding scale" payment scheme meant that the tax burden was not severe does "not take into consideration the immense extent of poverty and privation experienced by the masses, and in particular their way of living from hand to mouth, their persistent lack of cash, which turned the 'season of the tax' into one of horror, dread, and misery."[52] The tax was perhaps the largest budget item for a family whose wage earner was a teacher or laborer, for example. Failure to pay could result in physical punishment or imprisonment.[53] In efforts to escape payment, some individuals went into hiding or fled to smaller towns where the tax burden was lower.[54]

Due to the burdensome nature of the tax, charitable assistance from within the communities was essential to help the poorer members meet their obligations. The Geniza documents contain many references to poor Jews seeking help from wealthier co-religionists and to Jewish leaders in Cairo and Fustat sending poor

[49] Al-Shayzarī, *Nihāyat al-rutba*, 107; Ibn al-Ukhuwwa, *Ma'ālim al-qurba*, 45; Ibn Bassām, *Nihāyat al-rutba*, 208.

[50] See citations in n. 47.

[51] El-Leithy, "Coptic Culture and Conversion in Medieval Cairo, 1293–1524 A.D.," 41.

[52] Goitein, "Evidence on the Muslim Poll Tax from Non-Muslim Sources," 279; idem, *A Mediterranean Society*, 2:381. See also the chapter on debt and the *jizya* in Cohen, *Poverty and Charity in the Jewish Community of Medieval Egypt*, 130–138, and the documents presented in the companion volume, idem, *The Voice of the Poor in the Middle Ages*, 73–82.

[53] Goitein further explains the very poor conditions in prison; if the imprisoned person did not have someone to look after him and bring him food, imprisonment could result in death. Goitein, *A Mediterranean Society*, 2:372.

[54] El-Leithy, "Coptic Culture and Conversion in Medieval Cairo, 1293–1524 A.D.," 43; Goitein, *A Mediterranean Society*, 2:95–96.

foreigners on to villages with a letter requesting that their taxes be paid for them.[55] Due to this model of *jizya* charity, wealthy members of these communities were essential for the poorer members; if wealthier *dhimmī*s converted to Islam, the effects extended far beyond their immediate families. Particularly for elite Christians in the service of the sultanate, who were subject to the kinds of pressures discussed in the case above, their conversions had a significant trickle-down effect on poorer Christians who no longer had patrons for their *jizya* tax.[56]

In terms of the process of tax collection, Geniza documents show that typically sultanate authorities worked with Jewish and Christian leaders to determine what sum to collect from their entire group.[57] This process corresponds to the previous collection mechanism referred to in the report whereby 30,000 *dirham*s had been determined to be the total amount owed. Once that sum was decided, it may have been the case that a leader from the religious community collected from each individual in his tax area, using charitable contributions to cover the payment of the indigent, and turned the total over to the *muḥtasib* or other official. Another collection mechanism might have involved the *muḥtasib* or other official collecting directly from each individual according to a pre-determined list. An indigent individual could have received his charity in advance from a co-religionist, which he used to pay the collector. In either case, the sum was determined in advance. Here, calling Jews and Christians to the mosque was unusual, and the underlying thinking seems to have been that by identifying each person individually, rather than relying on information from the leaders of the communities to determine a total, more could be collected.

The case here is best described as an attempt at revenue maximization by a new sultan, whose calculations in his first months in office suggested that the previous means of *jizya* collection did not yield as much as he thought it could. The lack of any mention of the particular manner in which each individual gathered paid the tax suggests that the financial considerations were more important than carrying out any humiliating component of the collection process. The report does not say whether the collection resulted in a higher yield. Nor is there any discussion of ways in which the Christians and Jews might have resisted, and this is surely because protesting the tax was a far more dangerous undertaking than resisting dress codes, and failure to pay the tax could result in imprisonment. Likewise, the interests of the sultan and the *muḥtasib* in collecting revenue seemed much greater than in enforcing markers of difference on the Jews and Christians.

Conclusions

The cases discussed in this chapter show the *muḥtasib* involved in regulating Jews and Christians in ways that affected their daily lives. A *muḥtasib* oversaw the

[55] Goitein, *A Mediterranean Society*, 2:95. One particular letter sent with an individual traveling from Fustat to a village reads: "Kindly take care of this man and his large family, as long as we are busy with collecting money for the poll tax of the poor. We have already paid for ninety of them." Ibid. See also Cohen, *Poverty and Charity in the Jewish Community of Medieval Egypt*, 136–138.

[56] See n. 42 above.

[57] Goitein, *A Mediterranean Society*, 2:390–391.

destruction of a church, imposed anew distinctive markers on the dress of Jews and Christians, warned Christians not to work in the sultanate's administration, and participated in collecting their taxes. The *muḥtasib*s rarely acted on their own, however, relying instead on the sultan's backing. In the first case, the sultan approved the church's destruction, and it is unclear whether a *muḥtasib* could have ordered such an act solely on his own authority. In the third case, the *muḥtasib* told the sultan that Christians were ignoring dress and behavior rules, and persuaded the sultan to cease the employment of Christians in his administration. The sultan authorized the punishment of the Christian scribe, which included using him to warn other Christians. In the fourth case, the *muḥtasib* was present at the tax collection, but he does not seem to have been the one to initiate the event. Only in the second case, which involved dress restrictions and was arguably the least invasive, and least effective, of the four, did the *muḥtasib* initiate the orders.

The sultan's role indicates the policy considerations that were at work in these cases. The pact and the manuals address church clappers, instructing that they should be beaten either lightly or not at all, but these sources do not explain what should happen when this rule is broken, other than punishment of the particular Christians involved. While some measure of doctrinal support for the destruction of the church can be found in Ibn al-Rif'a's treatise and other sources, the decision made in this case depended on the sultan. Imposition of employment restrictions and collection of the *jizya* in the peculiar manner done here were also decisions of the sultan; doctrinal rules did not necessitate these particular results.

The distinctive dress markers that were imposed in the second and third cases can be characterized as derived from the pact, but the pact itself does not specify all of these affirmative markers of difference, providing only that non-Muslims shall not attempt to mimic the dress of Muslims and that Christians should wear the *zunnār* as they had before the Islamic conquest. The manuals do specify additional markers, however, and the orders of the *muḥtasib* in these two cases largely track the manuals' rules. The way that the manuals connect the affirmative markers of difference to the pact gives the impression that these markers were actually a part of the pact, and the *muḥtasib* furthered this belief by blending pact and extra-pact rules in his announcement. As a result, the contents of the Pact of 'Umar, and thus the restrictions imposed on non-Muslims, expanded to include new rules, which were in turn presented as carrying the original authority of 'Umar. However, even these additional markers of difference seem to have been stable and predictable throughout this period without any added beyond those discussed here. Everyone seems to have known that when there were pressures on the sultanate, enforcing the pact (and the rules that had become associated with the pact) was a likely response.

The non-Muslims tried to resist, sometimes successfully (when they avoided dress requirements) and sometimes unsuccessfully (when the church was destroyed). The ability to resist depended in large part on the level of determination of the *muḥtasib* (and sultan behind him) to enforce any particular rule. Employment in the sultan's administration was also subject to negotiation; the sultan appears to have dismissed the Christians in the face of public outcry, but typically

managed to bring some of them back when the anger died down, with others having converted to Islam in the process. The last case, involving tax collection, allowed little room for resistance. The sultan was serious about collecting revenue, and while rules of dress might not receive intense and consistent enforcement, money for the treasury was a different matter. From the perspective of the non-Muslims, financial considerations were also highly motivating ones, and seemed to play a larger role in conversions to Islam than did the intermittent impositions on dress and behavior.

6

Market regulation and consumer protection

The markets of Cairo and Fustat provided the cities' inhabitants with a vast array of goods and services. Residents bought bread, a daily affair, along with fruits, vegetables, and meat, and durable goods such as textiles, yarn, and shoes. The marketplace broadly was the site for important services, such as the bathhouse and hospital. In the process of acquiring what they needed, the people encountered merchants who were trying to earn a living themselves and who might be tempted to cheat a little on the quantity or quality of their wares. As a result of mere carelessness, some goods, such as food, could become spoiled and unsuitable for sale or consumption.

Consumer protection was a core part of the *muḥtasib*'s job. The appointment decree from the sultan focuses almost exclusively on market-related behavior, indicating a strong interest in commercial transactions. From the sultan's perspective, ensuring that the markets were running smoothly was more than a concern for the average person's welfare. In the streets and market areas, amidst the sellers of onions and dressmakers, people gathered and talked, and talk could turn into complaints. Indeed, public unrest often began in the market and for reasons that usually had to do with access to food. As for the merchants, they could threaten the sultan in many ways, including raising prices or closing their shops and refusing to sell, protesting a sultanic policy.

The jurists were concerned with the basic doctrinal rules underlying commercial transactions. For example, the goods sold must be lawful and the merchants must give full weight and measure. The jurists explained in detail what constitutes a lawful product, excluding the obvious examples of wine and pork but also goods that have no purpose, such as food unfit for consumption. They also elaborated rules for transactions. Concerned about the possibility of excessive risk (*gharar*), they prohibited purchases when the buyer (or seller) does not know with sufficient certainty what he or she is getting in the exchange.

For all of their detailed rules, however, the *fiqh* books did not offer much guidance on how the *muḥtasib* should identify infractions and punish them. Presumably, the details of commercial exchanges were very context-specific: one baker might come up with a particular way to sneak sawdust into bread dough, thus reducing raw material costs, whereas a baker in a different part of town might find a clever means of adjusting his bread scales to favor himself at the customer's expense. A *muḥtasib* needed to know the tricks and how to identify them, and the manuals gave very practical advice on how to detect fraud in the various trades. On a daily basis, the *muḥtasib* himself added another layer of discretion in deciding how to

approach the regulation of the markets. His actions depended on many factors, ranging from the geographical location of the event to his own personal calculation of how he might best position himself for promotion.

Case 6.1. An upstart market on the edge of town

Sometime after the middle of the eighth/fourteenth century, a mosque outside of central Cairo became the site of a start-up market that eventually attracted the attention of the *muḥtasib*. The mosque took the name of its endower, al-Sitt Ḥadaq, who was an important slave and nursemaid of Sultan al-Nāṣir Muḥammad b. Qalāwūn (third r. 1310–1341).[1] Once the mosque was built, the area around it became a gathering place for Nubians (*sūdān*). They started to produce and drink beer, and the area soon became known for its moral depravity and squalor. Residences and a big market developed such that the *muḥtasib* of Cairo had to appoint an assistant to investigate the food and drink that were being sold there.[2] The historian did not note, and possibly did not even know, what happened when the assistant arrived at the scene.

Despite the lack of details, the case reveals valuable lessons about the *muḥtasib*'s use of discretion. The area in question was fairly far from the central market area and the *muḥtasib*'s stand (see Map 6.1). The mosque is west of the Khalīj Miṣrī, the main canal branching off from the Nile in a northeasterly direction. The area is closer to Cairo than Fustat, and so it is not surprising that it was the *muḥtasib* of Cairo who took action.

The location of the mosque and the *muḥtasib*'s regulation of commerce in its vicinity highlight the growth patterns of Cairo. Whereas at the beginning of Ayyubid rule, that canal was the western boundary of the city, by the end of the Mamluk period, the territory between the canal and the Nile was fully occupied.[3] Initially, Ṣalāḥ al-Dīn (Saladin) extended the northern wall of Cairo westward from the canal to what was then the Nile at al-Maks[4] so that people would feel secure living around the port area. The ongoing natural shift of the Nile bed westward accelerated rapidly in the late Ayyubid period, conveniently yielding, at a time when Cairo's population was expanding quickly, approximately twice as much new land as had appeared in the previous four hundred years. After Baybars assumed the sultanate in 658/1260, he aided development north and west of the city, especially in the Lūq area near the mosque of al-Sitt Ḥadaq.[5]

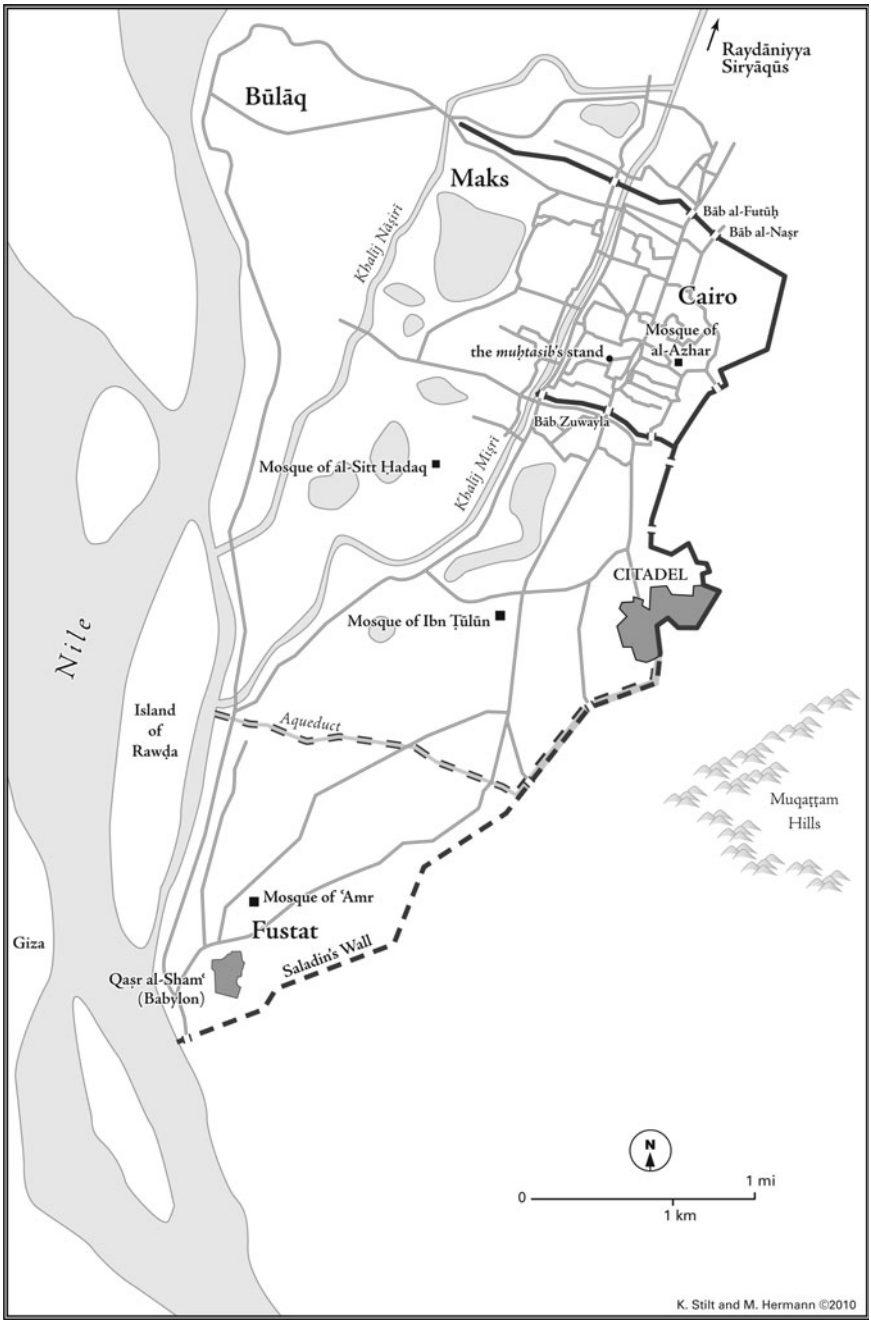
[1] Al-Maqrīzī, *al-Khiṭaṭ*, 3:378, 386; Williams, "The Mosque of Sitt Hadaq," 55–56. I am following al-Maqrīzī's spelling of al-Sitt Ḥadaq. The mosque was constructed in 740/1339–40 so the event must have occurred thereafter but prior to al-Maqrīzī's completion of *al-Khiṭaṭ*, which is believed to have taken place not long before his death in 845/1442. Broadbridge, "Academic Rivalry and the Patronage System in Fifteenth-Century Egypt," 100.

[2] Al-Maqrīzī, *al-Khiṭaṭ*, 3:386.

[3] Abu-Lughod, *Cairo*, 27.

[4] Although this has sometimes been spelled "maqs" in English, "maks" is the proper transliteration of the Arabic term.

[5] Abu-Lughod, *Cairo*, 30–33.



Map 6.1. The mosque of al-Sitt Ḥadaq in relation to central Cairo.

The mosque was constructed at the end of the long reign of al-Nāṣir Muḥammad, during whose time the western areas of Cairo were transformed: "All of the high lands [formed from the Nile's recession] along the new river edge at Būlāq and the Jazīrat al-Fīl, from al-Lūq to the village of Minyat al-Sīrij, began to be filled with orchards, farms, and palatial residences."[6] By the time of al-Maqrīzī, however, the area was already in decline, caused in large part by the plague, the first wave of which arrived in Cairo in 1348, causing a substantial loss in population. The cities of Cairo and Fustat each shrank inward, with the areas of former expansion returning to an earlier state of relative desertion.[7] When the market at the center of this case was burgeoning, however, the western regions were populated and growing.

Although the mosque was far to the west of the *muḥtasib*'s central territory of regulation, eventually the activities there came to his attention, and he dispatched an assistant to the market, where the people were making *mizr*, a beer of fermented wheat or barley.[8] Jurists who treated beer as an intoxicant with a similar legal status as *khamr* punished consumption of any quantity of it as a *ḥadd* crime. Some jurists, mainly of the Ḥanafī school, only punished under the heading of *ḥadd* consumption that led to actual intoxication when a substance other than *khamr* was involved, and not merely the consumption of a small amount.[9] Even for the latter scholars, however, the consumption of beer could be punished as a matter of *taʿzīr*, especially when accompanied by wrongful behavior that was independently blameworthy. Thus, whether under *ḥadd* or *taʿzīr*, beer consumption and the unspecified moral depravity taking place were wrongful.

The *muḥtasib* of Cairo did not get involved when this was just a case of beer consumption and other (unspecified) bad behavior, although as acts that took place in the open or public, they were within his jurisdiction. The additional development of a big market caused the *muḥtasib* to send an assistant to investigate the food and drink sold. There is no question that the regulation of products sold in markets was a large part of the *muḥtasib*'s responsibilities. All three of the Mamluk-era manuals focus heavily on the products that people buy and the merchants who sell them, ranging from food and medicine to shoes and fabric. Al-Shayzarī's manual, for example, includes chapters on grain and flour merchants, bakers, slaughterers and butchers, fish fryers, cooks, sausage makers, confectioners, apothecaries, and makers of medicinal syrup. Each chapter advises the *muḥtasib* on how to detect fraud and adulteration in a particular product, as when bakers try to cheat customers by adding chickpea or rice flour to the bread dough to make the loaf (which was sold by weight) heavier.[10] Regulation of commercial transactions in the marketplace, then, is exactly what the manuals expected the *muḥtasib* to do. The sultan's appointment document also reinforces the concern with marketplace transactions. The *muḥtasib*'s jurisdiction includes "all that is done in the course

[6] Ibid., 35. [7] Ibid., 39.

[8] Goitein, *A Mediterranean Society*, 4:261; Lewicka, "Restaurants, Inns and Taverns That Never Were," 72.

[9] Ibn Rushd, *Bidāyat al-mujtahid*, 1:871–872.

[10] Al-Shayzarī, *Nihāyat al-rutba*.

of earning a living by day and night." He is to examine the means of earning a living and warn against fraud because "most disease comes from food or drink."[11]

The *muḥtasib* and his assistants could not be in all places at all times, of course. Policing the city involved setting priorities; from a policy perspective, the *muḥtasib*'s calculations surely included the type and place of action, and perhaps even the kind of people involved. If he (or his assistants) spent too much time around this mosque area on the far side of the canal, they would have had less time and attention for central Cairo. As a result of Cairo's rapid growth during this period, the *muḥtasib* of Cairo had new territory added to his jurisdiction, and he had to determine how best to manage these new areas.

One way was to rely on an assistant, which is exactly what the *muḥtasib* did in this case, indicating that his authority could be delegated. In the case of gambling with eggs in Chapter 4, the *muḥtasib* sent (even routinely) someone out to stop the boys from their games.[12] Perhaps neither case warranted the personal attention of the *muḥtasib* himself nor were the matters so trivial that they could be ignored completely. While *muḥtasib*s could have assistants, the sources do not say much about their identity or actual functions, and significantly, only a few *muḥtasib*s had first served as an assistant *muḥtasib*. As a practical matter, the assistants must have been quite important, even though the biographers seem to have determined that service as assistant *muḥtasib* on its own did not make the person important enough to warrant an entry in their biographical compilations.[13]

In the events at the mosque, the *muḥtasib* may not have dispatched an assistant when it was just a matter of beer drinking and immoral acts among Nubians, a group of people who were identified as coming from southern Egypt and having black skin. It is possible that the Nubians were Christians, in which case their personal possession of intoxicants was permissible, although they would not be permitted to openly display or sell them to Muslims.[14] If they were privately consuming the beer themselves, refraining from any public display, then they had committed no wrong. But since the report indicates that the area became known for bad behavior, their actions seem to have been public and even a matter of general knowledge.

The *muḥtasib* turned his attention to this area when a market developed, suggesting that the sale of goods was a matter of greater importance than a small

[11] See the appointment document in Chapter 2.

[12] Al-Maqrīzī, *al-Khiṭaṭ*, 1:720.

[13] Biographers recorded an entry for an assistant of the *muḥtasib* Ḍiyā' al-Dīn, allowing for a sense of the background of one person who held this position: Amīn al-Dīn Darwīsh (d. circa 749/1348) began his career when he went from Safad (see Map 1.1) to Damascus, where he worked as a gatekeeper (*bawwāb*) at a *madrasa*. He was known for his excellent handwriting and, in the course of his career, continued on to Baghdad, then to India, then onwards to Yemen, arriving in Cairo. In Cairo, he contacted the *muḥtasib*, Ḍiyā' al-Dīn, whom he apparently already knew (perhaps from Damascus), and the former made him his assistant. Ibn Ḥajar al-'Asqalānī, *al-Durar al-kāmina*, 4:209. Thus, the *muḥtasib*—at least in some cases—had the discretion to appoint his own assistants.

[14] The Pact of 'Umar, discussed in Chapter 5, specifically mentions selling or providing intoxicants to Muslims: "We shall not sell intoxicants nor give them to anyone to drink." See the discussion in Chapter 4 for the rules of the possession of intoxicating substances by Muslims and Christians.

group of misbehaving Nubians. Offering food and other items was a much larger issue that could affect many consumers, especially when residents of this burgeoning area west of the canal may have decided that shopping in this local market was more convenient than traveling to the markets of central Cairo. Further, if the *muḥtasib* was collecting taxes from merchants, perhaps even to constitute his own salary, then he needed to determine the identities of these new market participants.[15] This market on the edge of town, then, became part of the *muḥtasib*'s area of concern only when it grew to a certain size, suggesting that where events took place was as much a part of the discretion equation as who the actors were and what they were doing.

Case 6.2. Forbidden meat

At the beginning of 695/1295, during the short reign of Sultan ʿĀdil Kitbughā, food shortages led to high prices and then a full-scale famine in Cairo. An undernourished population facilitated the spread of disease, to the point that chroniclers used "epidemic" (*wabā'*) to describe the situation.[16] People died by the thousands. Out of desperation, they turned to carrion and even cannibalism. During this crisis, the *muḥtasib*s of Fustat and Cairo would punish (*taʿzīr*) a number of cooks and meat sellers every day because of their sale of pack animals (*dawābb*), dogs, and carrion (*mayta*) that the *muḥtasib*s deemed in violation of doctrinal rules.[17]

Carrion refers to animals that are not slaughtered according to the Islamic rules of slaughter; they may have been slaughtered inappropriately or they may have died from other causes. There is no dispute in the legal texts about the status of carrion: it is impermissible as food, with certain exceptions.[18] And since the jurists agreed that any object sold must have a lawful use in order for the sale to be valid, carrion cannot be sold.[19] All three manuals give a summary of the rules for slaughtering, which include: the slaughterer must be an adult, sane, Muslim man; the animal must not be treated in a way to cause any pain prior to the moment of slaughter (this includes a prohibition on pulling the animal to the site of the slaughter or slaughtering one animal in the presence of another due to the fear it causes); the slaughterer must say "in the name of God" over the animal; the animal must be facing Mecca; and both jugular veins must be cut at once with a sharp knife (or other approved instrument).[20]

[15] See discussion of the compensation system for the *muḥtasib* in Chapter 2.

[16] Michael Dols explained that the term *wabā'* was used for epidemic or pestilence. It is distinctly not the much more serious term for a plague. Every plague is also an epidemic, but every epidemic is not the plague. *Wabā'* may also refer to other epidemic diseases, including typhus, typhoid, and smallpox. Dols, *The Black Death in the Middle East*, 315–316.

[17] Ibn al-Furāt, *Tārīkh*, 8:208–209; al-Maqrīzī, *Kitāb al-Sulūk*, 1:814. The crisis is discussed in al-Maqrīzī, *Ighāthat al-umma*, 32–35 (where cannibalism is mentioned); Chapoutot-Remadi, "Une grande crise à la fin du XIIIe siècle en Égypte"; and Allouche, *Mamluk Economics*, 44–47. The famine was the first of the Mamluk era and lasted for more than a year. Sabra, *Poverty and Charity in Medieval Islam*, 141.

[18] Q 2:173 (discussed in text below); al-Jaṣṣāṣ, *Kitāb Aḥkām al-Qur'ān*, 1:107–109.

[19] The object must be *mutaqawwam*, meaning that its use is lawful. Vogel and Hayes, *Islamic Law and Finance*, 94, 302.

[20] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 98.

Unless the slaughter of an animal was witnessed, there is little way for a *muḥtasib* to determine if these rules had been satisfied. As for whether the animal died from causes other than slaughter, Ibn al-Ukhuwwa in his manual provided two tests that he instructed the *muḥtasib* to conduct. The first involves putting the carcass in water—if it floats, it is carrion, and if it sinks to the bottom, it was slaughtered. The second way involves putting some of the meat onto coals—if it does not stick to the coals, it is carrion, and if it sticks, it was slaughtered.[21] In this case, the reports do not specify how the *muḥtasib*s knew that the merchants were selling carrion or whether these or any other tests were employed.

As for the kinds of meat sold, the Shāfiʿīs, Ḥanbalīs, and one Mālikī view permit the consumption of horse meat, while the Ḥanafīs and a second Mālikī opinion consider it reprehensible (*makrūh*) though not forbidden. The majority view within the Mālikī school prohibits consumption of horse meat.[22] All schools, excepting one Mālikī minority view, prohibit human consumption of donkeys, and mules were largely considered forbidden as well.[23] As for dogs, all four schools deem dog consumption to be prohibited, although one Mālikī view considers it merely reprehensible.[24] Of the three manual authors, only Ibn al-Ukhuwwa gave a lengthy explanation of which animals are permissible to eat: he pronounced the eating of mules and donkeys prohibited, but said that horses are permissible.[25] With the exception of horse meat (which the merchants may not have been selling, depending on the definition of pack animal), in punishing the meat-sellers the *muḥtasib*s were acting according to a near-consensus of the jurists.

But how were consumers or the *muḥtasib* supposed to be able to identify the kind of meat the butchers were selling? Al-Shayzarī and Ibn Bassām both provided rules for how butchers should display their wares. The *muḥtasib* should ensure that the butchers do not extend the backsides of the carcasses beyond the line of the benches of their shops because otherwise the carcasses might brush against the clothing of the passers-by. They should keep goat meat separate from sheep meat, color goat meat with saffron to make sure the two are distinguishable, and leave the tail on the goat until the last of it is sold. Further, the manuals state that goat meat is recognizable by the whiteness of the fat and the fineness of the ribs, and they go on to describe other ways in which the fat and the lean meat of goat and sheep are distinguished from each other.[26] If this level of detail was followed by the butchers in this case, the *muḥtasib* and customers should have been able to distinguish different kinds of meat by sight, or at least know what was goat and sheep meat. Once the meat was cooked, however, there was little ability to determine its origins.

Neither report identifies the names of the *muḥtasib*s involved in this case, but they were likely Ibn al-Rifʿa in Fustat and ʿAlāʾ al-Dīn Aḥmad b. ʿAbd al-Wahhāb b. Khalaf al-ʿAlāmī (d. 699/1299) in Cairo. The learned Shāfiʿī scholar Ibn al-Rifʿa

[21] Ibid., 100.
[22] "Laḥm," *al-Mawsūʿa al-fiqhiyya*, 35:210–211.
[23] Ibid., 35:211–212.
[24] Ibid.
[25] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 101–102.
[26] Al-Shayzarī, *Nihāyat al-rutba*, 27; Ibn Bassām, *Nihāyat al-rutba*, 35–36.

surely knew the rules on permissible meat.[27] As for ʿAlāʾ al-Dīn, he was a Shāfiʿī and the son of the first Shāfiʿī chief judge of Egypt, Ibn Bint al-Aʿazz.[28] Two of his brothers also served as chief judges in Egypt, but ʿAlāʾ al-Dīn himself did not make it to that high position.[29] He taught at the Kahhāriyya and Quṭbiyya *madrasa*s.[30] Ibn Taghrībirdī referred to him as "judge," but it is not clear when and what kind of judgeship he held.[31] The chroniclers emphasized his skill in poetry, and his experiences as office-holder took second place to descriptions of his literary talents.[32] Although his biographers were lukewarm about his juristic skills, his educational background strongly suggests that he was familiar with the basic rules relating to food.

Desperately hungry people trying to sustain themselves with whatever nourishment they could find clearly raises the issue of legal necessity, although the report did not discuss it explicitly. Quran 2:173 reads: "He has forbidden to you only carrion, blood, the flesh of swine, and that over which any name other than God's has been invoked; but if one is driven by necessity—neither coveting it nor exceeding his immediate need—no sin shall be upon him: for, behold, God is much-forgiving, a dispenser of grace."[33] In the case here of merchants selling impermissible meat, there is no evidence that the *muḥtasib*s considered whether it was a situation of legal necessity. The necessity might have been seen as limited to the need to consume, but not to sell. Even without an explicit discussion, the actions of the *muḥtasib*s do suggest a lenient approach to the purchasers and even the sellers. Passing over the consumers' wrongdoing may have been due to sympathy towards the plight of the starving people, who may not have known—or did not want to know—what they were purchasing at a time of such desperation.

The details of the *muḥtasib*s' punishment (*taʿzīr*) of the merchants were not specified—it could have been physical beating or lashing or merely harsh words of warning. The merchants continued to sell, even when after a few visits by the *muḥtasib*s they must have suspected that the *muḥtasib*s would be back again the next day. Either the penalty was not severe enough to deter them, or the profit gained from desperate customers was worth the punishment. From the perspective of the *muḥtasib*s, they seem to have acted on the assumption that stopping the sales and confiscating the meat would have resulted in an even worse situation for the

[27] See discussion of his biography in Chapter 2.

[28] The sources do not specify when he served as *muḥtasib* other than it was "at his end," suggesting that a term of 689–99/1290–9 is a reasonable guess given the dates of his predecessors and successors. Ibn Taghrībirdī, *al-Manhal al-ṣāfī*, 1:359; al-Ṣafadī, *Aʿyān al-ʿaṣr*, 1:279.

[29] Ibn Taghrībirdī, *al-Manhal al-ṣāfī*, 1:358.

[30] Al-Ṣafadī, *Aʿyān al-ʿaṣr*, 1:279. The Quṭbiyya *madrasa* provided lessons in Shāfiʿī and Ḥanafī jurisprudence and was founded by ʿIṣmat al-Dīn, who was the daughter of the Ayyubid sultan al-Malik al-ʿĀdil. Berkey, *The Transmission of Knowledge in Medieval Cairo*, 163.

[31] Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 8:189.

[32] Ibn Taghrībirdī, *al-Manhal al-ṣāfī*, 1:359–360; al-Maqrīzī, *Kitāb al-Sulūk*, 1:904; Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 8:189.

[33] Muhammad Asad (trans.).

consumers. Yet, they did not simply turn the other way and allow the transactions to continue unimpeded. In permitting the customers to buy the meat while chastising—but not stopping—the merchants, they seem to have reached a compromise position that allowed them to carry out their basic duties while also recognizing the terrible situation affecting society at that time.

Case 6.3. Towels, scales, lanterns, and a rival *muḥtasib*

Soon after Ḍiyāʾ al-Dīn was appointed *muḥtasib* of Cairo in 737/1337 (he was already *muḥtasib* of Fustat at that time), he issued a trio of orders. He ordered the bath attendants to use ample-sized waist wraps in the bathhouses; he organized the weighers (*qabbāniyyūn*) into specific districts, so that they were spread throughout the city; and he prohibited the sellers of confections and fruits from lighting their lamps at night with *al-zayt al-ḥārr* (an oil made mainly from flax seeds).[34] His appointment to the position in Cairo had some opponents, however. Three powerful amirs—Bashtāk, Qawṣūn, and Aqbughā—were pushing their own candidate for the position. Their choice, al-Shihāb Aḥmad b. al-Ḥājj ʿAlī al-Ṭabbākh, lost out to Ḍiyāʾ al-Dīn, but the amirs were sufficiently influential to persuade the sultan to give al-Ṭabbākh some kind of consolation appointment.

Al-Ṭabbākh was put in charge of "the *ḥisba* of smoke (*dukhān* or *dukhkhān*), namely, for cooks, confectioners, and the like."[35] This charge seems to cover food purveyors whose preparation process involves a smoke-producing fire, such as merchants who cooked meat.[36] As a jurisdictional matter this was an unusual appointment, made to accommodate this particular situation, since in no other context was part of the substantive jurisdiction of the *muḥtasib* of Cairo or Fustat carved out and granted to someone else. The *muḥtasib* could appoint assistants of his own, in which case the assistant would report to the *muḥtasib* as his boss, but here al-Ṭabbākh was set up almost as a rival *muḥtasib*, with his own (albeit small) jurisdiction.

As his name indicates, al-Ṭabbākh was a cook, and he may have had his own personal reasons for wanting to supervise that portion of the market in which he participated directly. As discussed in Chapter 2, *muḥtasib*s rarely had experience as a market participant, and thus this appointment of al-Ṭabbākh was doubly exceptional. *Muḥtasib*s could and surely did rely on experts (sing. *ʿarīf*) from particular market areas who would serve as informants and liaisons between the market participants and the *muḥtasib*, but that was not al-Ṭabbākh's role here. The reports do not state what actions al-Ṭabbākh might have taken in his new capacity or even explain what his amir-supporters hoped to achieve with his appointment.

[34] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:414–415; Goitein, *A Mediterranean Society*, 1:105.

[35] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:414. According to the editor of *Kitāb al-Sulūk*, "smoke" refers to professions that involve a fire. Ibid., 2:414–415 n. 6.

[36] Al-Shayzarī, *Nihāyat al-rutba*, 34–35; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 106–108; Ibn Bassām, *Nihāyat al-rutba*, 44–46.

The *muḥtasib* Ḍiyāʾ al-Dīn responded to his appointment with the above-mentioned three precise orders. However, the chronicles do not suggest that the use of bathhouse wraps, scales, and lanterns in the marketplace were pressing social issues. While they all fell within the *muḥtasib*'s jurisdiction, the choices he made suggest that he was trying to establish his authority in a wide range of areas in light of the possibly threatening interloper. Ḍiyāʾ al-Dīn was a masterful administrator; this was the first of his three terms as *muḥtasib* of Cairo, and he would prove himself adept at serving the sultanate and would be rewarded for his service. At this early point in his career, he seems to have considered how he could assert his own power in the face of this challenger, who had friends in high places. He issued orders for matters squarely within his jurisdiction as *muḥtasib*, with which he may have aimed to garner gratitude from shoppers, bathers, and Cairenes in general.

The size of bathhouse wraps was not trivial: it was a matter of consumer protection and it also related to clear doctrinal rules. The fee paid to enter the bathhouse typically included the use of clogs and at least one wrap; charging a fee for bathhouse entry and then providing an inadequately-sized wrap amounts to cheating the customer.[37] Further, a shortened wrap could place the customer in a precarious legal position if it did not cover the parts of the body that should not be revealed to others, the *ʿawra*. The definition of one's *ʿawra* depends upon location and who else is present. For example, a Muslim woman should cover herself more in the presence of a non-Muslim man than in front of another Muslim woman, according to the jurists. For both Muslim men and women in the private company of members of the same sex and religion, such as in the bathhouse, the *ʿawra* is defined as the area between the navel and the knees.[38] Thus, the wraps needed to be big enough to cover the relevant part of the bather's body in order to comply with doctrinal rules.[39]

Most adults bathed in the bathhouse regularly, perhaps on a weekly basis.[40] It was the main means of *ghusl*, or removing major ritual impurities, which was a necessary precondition to prayer.[41] Major ritual impurity is caused by sexual intercourse, any emission of semen, and menstruation or puerperium. The performance of *ghusl* necessitates a large tank of water or flowing water such as in a stream or from a faucet. Most residents of Cairo and Fustat did not have baths in their homes, and bathing in the river might not have been a convenient option. Thus, the bathhouses, located throughout the city, were essential facilities.[42] Due

[37] Warner, "Taking the Plunge," 60–62. Nicholas Warner's article contains reproductions of drawings of bathhouse interiors showing the wraps hanging in the first room (called the *maslakh*), ready to be given to the incoming customers. Ibid., 59–61.

[38] "ʿAwra," *al-Mawsūʿa al-fiqhiyya*, 31:47–48; "Ḥammām," *al-Mawsūʿa al-fiqhiyya*, 18:156.

[39] Describing Egypt in the early to mid-nineteenth century, Edward William Lane observed that the towel that a bather in the bathhouse puts around his waist "reaches to the knees, or a little lower." Lane, *An Account of the Manners and Customs of the Modern Egyptians*, 338.

[40] Nicholas Warner surmised that weekly visits were normal. Warner, "Taking the Plunge," 55.

[41] "Ghusl," *al-Mawsūʿa al-fiqhiyya*, 31:194–217.

[42] Nicholas Warner noted that some students received bath allowances in their stipends in case the institution of learning did not have its own facilities. Warner, "Taking the Plunge," 52.

to their importance in preparing for prayer, bathhouses were often built in close proximity to mosques, with the same patron funding the construction of both.[43]

The *muḥtasib*'s regulation of the bathhouse is treated in a lengthy chapter in each of the three manuals.[44] The *muḥtasib* is instructed to inspect the bathhouse regularly; if he sees anyone who has revealed his *ʿawra*, he should punish him because to do so is forbidden.[45] The bathhouse should make available waist wraps for bathers.[46] Ibn al-Ukhuwwa added that these wraps "should be wide enough to cover the body between the navel and the knee," corresponding to the notion of the *ʿawra*.[47] Neither he nor the authors of the other manuals explained how a male *muḥtasib* was supposed to inspect the modesty of female bathers, although at the end of the section on the bathhouse Ibn al-Ukhuwwa said that the *muḥtasib* is supposed to punish women for improper dress if he is able, and if he is not, then he is relieved of the duty.[48]

Secondly, the *muḥtasib* in this case forbade purveyors of fruit and sweets from using *al-zayt al-ḥārr* in their lanterns at night. This oil, made mainly from flax seeds, was known for reaching a high temperature when heated (thus its name, which means hot oil) and for emitting a particular smell. Since flax was a major crop in Egypt, this oil was readily available, and used in particular for lighting.[49] The order may have been concerned with protecting customers from excessively hot lanterns and from an unpleasant smell, even though due to its prevalence, market-goers must have been used to it.[50] Sellers of fruit and sweets were singled out in this order, and it may have been that these were the merchants who had the most customers in the evenings, when the lanterns would be needed. Since the *muḥtasib*'s rival was given jurisdiction over the merchants who produce smoke in the making of their foodstuffs, including confectioners, the *muḥtasib* may have been trying to assert his own control over some of the same merchants that his rival would be regulating.

The *muḥtasib*'s final order organized and dispatched weighers (sing. *qabbānī*) throughout the city so they would be accessible in all market areas. A *qabbān*, the instrument used by such a weigher, is a particular type of scale, called a steelyard

[43] Ibid., 69.

[44] Al-Shayzarī, *Nihāyat al-rutba*, chapter 35; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, chapter 42; Ibn Bassām, *Nihāyat al-rutba*, chapter 25.

[45] Al-Shayzarī, *Nihāyat al-rutba*, 88; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 157; Ibn Bassām, *Nihāyat al-rutba*, 70.

[46] Al-Shayzarī, *Nihāyat al-rutba*, 88; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 156; Ibn Bassām, *Nihāyat al-rutba*, 70.

[47] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 156. He went on to criticize women for being careless in covering their *ʿawra*.

[48] Ibid., 157. In Case 5.2, involving Jewish and Christian women entering the bathhouse, it was female bath attendants who enforced the distinctive marker they were supposed to wear around their necks.

[49] Goitein, *A Mediterranean Society*, 1:120.

[50] I thank Ahmed Ragab for the observation that the smell and heat might have been reason for the *muḥtasib*'s prohibition.

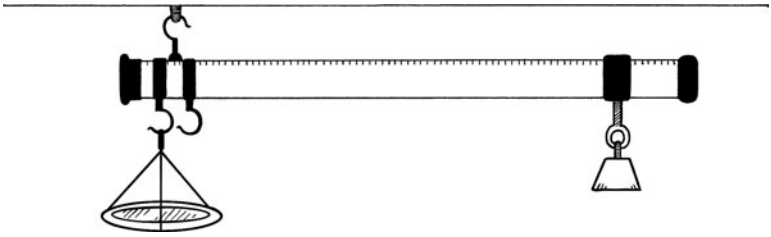


Image 6.1. An artistic rendition of a steelyard, or *qabbān*.

or a Roman balance.[51] The goods to be weighed are hung on one side and the weight is adjusted until the bar is horizontal. The top piece may be held by hand or attached to a firm object (see Image 6.1).

Evidence from another incident involving a *qabbānī* indicates that these weighers were an essential part of a well-functioning market. In a separate discussion regarding the market of the Barjawān quarter, al-Maqrīzī noted that there was a *qabbānī* in that large market who was tasked with weighing food, coins, and other goods. This market, located west of the mosque of al-Ḥākim and indicated on Map 2.1, was so large that al-Maqrīzī considered it the greatest of the Cairo markets, so full of diverse goods that the residents of the quarter did not need to shop anywhere else. This vigorous trade affected the *qabbānī*—"he was never free from weighing and constantly occupied by it, and there was always someone pestering [the *qabbānī*] to weigh for him."[52] This report indicates the importance of weighers to the life of the market. Consumers were at a disadvantage in a transaction involving goods that needed to be weighed because they could not test a merchant's scales or weights, and they did not carry around their own scales. Further, some merchants may not have had their own scales, leaving buyers and sellers completely dependent upon the weigher.[53]

Each manual includes a long discussion of scales (*mīzān*, pl. *mawāzīn*) that states that the most accurate scale is one in which the two sides are equal and the pans are balanced: this is the classic *mīzān*.[54] Since the *qabbān* seems more portable than a classic *mīzān*, it is not surprising that the *muḥtasib* dispatched weighers with it. Ibn al-Ukhuwwa dealt specifically with the issue of the person who weighs with a *qabbān*. He stated that the *muḥtasib* should allow only those who are trustworthy, reliable, and knowledgeable about weights to weigh with a *qabbān*, because it is a serious and important craft and the seller and buyer are both completely dependent

[51] *EI*^{2}, s.v. "Ḳarasṭūn" (K. Jaouiche); "Steelyard," *Oxford English Dictionary*.

[52] Al-Maqrīzī, *al-Khiṭaṭ*, 3:319.

[53] Measurers of grain (*kayyāl*, pl. *kayyāliyyūn*) were also mentioned by al-Maqrīzī as designated people who would measure grain. Al-Maqrīzī, *Kitāb al-Sulūk*, 2:395.

[54] Al-Shayzarī, *Nihāyat al-rutba*, 18; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 83. Ibn Bassām, *Nihāyat al-rutba*, 182, has a slightly different wording, which may be due to an error in the manuscripts.

upon him.[55] Al-Shayzarī added that the *muḥtasib* should inspect the *qabbān* periodically because it might become bent from weighing heavy items.[56]

The jurists agreed on the prohibition of failing to provide full measure in a transaction, based on several Quranic verses. Q 83:1–6 states:

> Woe unto those who give short measure: those who, when they are to receive their due from [other] people, demand that it be given in full—but when they have to measure or weigh what they owe to others, give less than what is due! Do they not know that they are bound to be raised from the dead [and called to account] on an awesome Day—the Day when all men shall stand before the Sustainer of all the worlds?[57]

Q 11:85 makes the prohibition even more explicit: "Give full measure and weight, with equity, and do not deprive people of what is rightfully theirs, and do not act wickedly on earth by spreading corruption."[58] In addition, in the chapter on sales, jurists commonly cited a *ḥadīth* that requires food to be weighed before it is sold.[59]

Returning to the appointment of Ḍiyāʾ al-Dīn as *muḥtasib* alongside the particular tasks given to the rival al-Ṭabbākh, it seems that the people benefited from the situation, especially as it may have been the prompt that spurred Ḍiyāʾ al-Dīn into action. The sources do not say what al-Ṭabbākh did in office, but perhaps he went straight to work trying to establish his authority by issuing orders that benefited consumers (or perhaps by issuing arbitrary and capricious ones). As for Ḍiyāʾ al-Dīn, if he was trying to establish his own authority and gain supporters in the face of a rival, he made some wise choices. Dispatching weighers throughout the city, ensuring that bathhouse towels were long enough, and protecting consumers from encountering very hot and unpleasant-smelling lanterns were good ways to make his case to the people, and perhaps the sultan took notice, too.

Society did not always benefit from officials competing for office. Particularly when amirs were positioning themselves to make a move towards the throne upon the death of, or some showing of weakness by, the reigning sultan, violence could erupt and spill out onto the streets, even causing merchants to close their shops. Nor did rival *muḥtasib*s necessarily improve the situation—the *muḥtasib* of Cairo at the end of the Mamluk period, al-Zaynī Barakāt, may have provoked a crisis of bread prices in order to get his job back. But in the case here, at least, Ḍiyāʾ al-Dīn's trio of orders seems to have benefited Cairenes in some key areas of daily life.

[55] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 84–85. Some doctrinal books include a discussion of the *qabbān* and the *qabbānī* in chapters on sales, and clearly the *qabbān* was recognized as a legitimate means of weighing. A legal issue was whether the *qabbānī* is responsible if he makes a mistake in weighing. The Shāfiʿī opinion, for example, holds the *qabbānī* responsible for a mistake in weighing and for errors in the amounts that are marked on the *qabbān*. Al-Ramlī, *Nihāyat al-muḥtāj*, 4:101.

[56] Al-Shayzarī, *Nihāyat al-rutba*, 19.

[57] Muhammad Asad (trans.).

[58] Ibid.

[59] This *ḥadīth* in various versions is widely reported in the *ḥadīth* collections. See, e.g., al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ*, 4:47 (*ḥadīth* 1920).

Case 6.4. Concerning weights and measures

This case on standardization of weights and measures comes from the personal observations of one of the earliest *muḥtasib*s of Fustat in the Mamluk period, Ibn al-Rifʿa. He was also a well-respected and prolific scholar, and one of his books, *Kitāb al-Īḍāḥ wa-l-tibyān fī maʿrifat al-mikyāl wa-l-mīzān*, deals explicitly with the issue of weights and measures.[60] In the introduction to the book, he stated that he composed the treatise because "there occurred in this time, the year 703 [1303–04], disagreement among people appointed to offices[61] about a matter for which an opinion was sought… This matter is the explanation of measurements of length, volume, and weight."[62] Because of this, he explained, "I wanted to gather together the opinions of our companions [Shāfiʿīs] along with a bit from other [schools]."[63] Ibn al-Rifʿa's treatise on weights and measures provides valuable insight because it presents a *muḥtasib* firsthand, rather than through the filter of the historians who wrote the chronicles.

Ibn al-Rifʿa emphasized the role of doctrine in establishing measurements when he stated at the beginning of the treatise that "it is not permissible to change that which the law (*sharʿ*) has determined regarding measure and weight, whether by a decrease or an increase."[64] As a practical matter, though, how can standard measurements be maintained across a vast expanse of time and place? Referring to his service as *muḥtasib*, he wrote: "I found in the *dār al-ḥisba* in Fustat, when I took the position, a *kayl* of copper hollowed out from one piece." *Kayl* is a general term referring to a vessel for cubic measurement, something like a measuring cup. He described the cup, which was the measurement of a *mudd*, in detail:

> On the inside, two lines of writing were engraved: "In the name of God, the Merciful and Compassionate. This was made in the time of al-Malik al-ʿAzīz[65]… for the jurist and *imām* al-Zāhid Shihāb al-Dīn, who was in charge of *ḥisba* for the Muslims… This *mudd* was gauged according to the Prophetic *ṣāʿ* and formulated according to the correct standard measure as verified by pure water. Its weight with water corresponds to 337 *dirham*s. That is on the eighteenth of Rabīʿ I, year 591 [1195]."[66]

Ibn al-Rifʿa found this measuring cup at the *dār al-ḥisba*, which is the *muḥtasib*'s stand, or office. As described in Chapter 2, Ibn Duqmāq made reference to an alley where the *muḥtasib* of Fustat was located, but did not specify a *dār* or *dikka* (see

[60] Al-Maqrīzī also wrote a treatise on weights and measures, *Risāla fī al-makāyīl wa-l-awzān al-sharʿiyya*, which he completed in 841/1437. This text was published as *Kitāb al-Awzān wa-l-akyāl al-sharʿiyya*. He did not make personal observations or mention the *muḥtasib* in the treatise, however.

[61] This could refer to people appointed to the position of *muḥtasib* although he did not explicitly say so.

[62] Ibn al-Rifʿa, *Kitāb al-Īḍāḥ*, 44.

[63] Ibid., 44–45.

[64] Ibid., 45.

[65] The son of Ṣalāḥ al-Dīn, who ruled immediately after him, 589–95/1193–8.

[66] Ibn al-Rifʿa, *Kitāb al-Īḍāḥ*, 74–75.

Map 2.2). Ibn al-Rifʿa's reference gives support to the conclusion that there was a specific location dedicated to the Fustat *muḥtasib*.[67]

The measuring cup that Ibn al-Rifʿa found in the *dār al-ḥisba* in Fustat was for the measure of one *mudd*. The *mudd* was gauged according to the larger Prophetic *ṣāʿ*, with four *mudd* equaling one *ṣāʿ*. The *ṣāʿ* refers to a unit of measure that the Prophet used in the year 2/623–4, when he specified that for the holiday at the end of the month of Ramadan, the amount of the compulsory alms (*zakāt al-fiṭr*) was one *ṣāʿ* of grain. The cubic contents of the *ṣāʿ*, however, like that of the smaller *mudd*, varied from town to town, and the Prophet used the *ṣāʿ* of Medina as the standard measure for this purpose. Thus the *ṣāʿ* of the Prophet refers to a specific measure, but the practical problem was enforcing the use—indeed, the knowledge—of that specific standard of measure throughout the growing Muslim territory after the time of the Prophet.[68]

Ibn al-Rifʿa then explained how the contemporary *irdabb*, a unit of measurement used in Egypt, was formed from the standard measure of a *mudd*: one *irdabb* equals 144 standard *mudd* measuring cups.[69] By relating the standard *mudd* at the *dār al-ḥisba* to measurements used in his time, he indicated that it should be used as a benchmark against which to test measures used in the marketplace, which served the practical purpose of standardization and also related the Egyptian *irdabb* to the doctrinally determined units of the *mudd* and *ṣāʿ*.[70]

Who produced these standard weights and measures in Cairo and Fustat? In his topography, al-Maqrīzī described the center of standard measures (*dār al-ʿiyār*) for Cairo as the place where scales and balances and all standard weights were made and then sold to merchants:

> The sultan's administration (*dīwān*) pays the expenses, such as for copper, iron, wood, and glass, for other instruments, and for the wages of workers and supervisors. The *muḥtasib* or his assistant is brought to the *dār* so that what is made in it is tested in his presence, and if it is correct, he endorses it, and if he orders its remaking, then it is worked on until it is correct.[71]

[67] Ibn al-Rifʿa did not use the term "*dikkat al-muḥtasib*," which is the wording used for the stand of the Cairo *muḥtasib*. But in Cairo there was both a *dikkat al-muḥtasib* and a *dār al-ʿiyār* (center of standard measures), which seem to have been in different locations. Al-Maqrīzī's description of the *dār al-ʿiyār* stated that "when Ṣalāḥ al-Dīn took control he confirmed [the *dār*], and endowed it as a *waqf* [pious endowment] . . . This *dār* remained until . . ." Unfortunately, the manuscript was blank at this point. Al-Maqrīzī, *al-Khiṭaṭ*, 2:517–518. These two locales of the *muḥtasib*'s *dikka* and the *dār al-ʿiyār* may have been physically joined in Fustat, since it was a smaller city, and the combination produced a *dār al-ḥisba*. Another possibility is that the terms "*dikkat al-ḥisba*" and "*dār al-ḥisba*" were used interchangeably.

[68] *EI*^{2}, s.v. "Ṣāʿ" (A. Bel). Jurists also tried to provide general estimates for this official *ṣāʿ* so that Muslims in other areas could approximate its measure without having an actual Medinan *ṣāʿ* on hand. These two measures are also used in other contexts as required by Islamic law, such as the minimum quantity of water needed for ablution. The *mudd* is used for ordinary ablution and the larger *ṣāʿ* for general ablution. Ibid.

[69] Ibn al-Rifʿa, *Kitāb al-Īḍāḥ*, 76.

[70] The measurement of the Prophetic *mudd* and *ṣāʿ* may have remained stable throughout the Mamluk period, but their relationship to the *irdabb* seems to have changed. Ibn al-Rifʿa claimed that one *irdabb* was equal to 144 *mudd*, but at some point in the fifteenth century, one *irdabb* was equivalent to 96 *mudd*. Allouche, *Mamluk Economics*, 87.

[71] Al-Maqrīzī, *al-Khiṭaṭ*, 2:517.

Standardization depended upon maintaining samples by which everything was made and checked:

> There are samples at the *dār* by which the weights and measures are checked, because weights, scales, and measures are sold only here. Merchants must come to the *dār* when the *muḥtasib* asks them to, and bring with them their weights, scales, and measures, and have them tested occasionally. If there [was] one giving short measure, it [was] taken and the merchant [was] forced to buy as a substitute an accurate one made at the *dār*.[72]

Initially at least, imprecise instruments were seized and the merchant was forced to buy another. Over time, though, as al-Maqrīzī explained, a merchant with a problem with a scale or measure only had to have it fixed and pay the cost of the repair.[73]

The appointment document evidences great concern for accurate measures, expressed in part by the poetic statement that the *muḥtasib*'s jurisdiction includes "that for which the amount can be known only by the utterances of the tongue of the balance or the speech of the mouth of the dry measure." The document specifies that the *muḥtasib* should maintain standard measures, so that whenever measures are compared to his, he will know who is wrong and who is correct.[74]

The *muḥtasib* manuals also pay careful attention to the standard measures of weight, volume, and length. They explain how the *muḥtasib* should ensure that merchants adhere to these standards and they describe common varieties of fraud. Weights should be made of iron and tested and stamped by the *muḥtasib*, for example, and merchants should not keep extra unnecessary weights in their shops, because doing so is suspicious, nor should a merchant use a one-third weight because it can be confused with a one-half weight when the shop is busy.[75] A separate issue is how the merchants use the scales, because even if the weights are accurate and the scales properly calibrated, a merchant can still cheat a customer by playing tricks during the weighing process. For example, al-Shayzarī stated that the *muḥtasib* should order those who own scales to wipe and clean them hourly, as a drop of oil may stick to them and affect the weight.[76]

As for the dry measure, all three manuals state that the correct measuring receptacle is one whose top and bottom are equal in shape and size, without being bent or irregular. The manuals of both Ibn al-Ukhuwwa and Ibn Bassām specify that the *muḥtasib* should put his stamp on the weights and measures he tests to signal his approval. Ibn Bassām gave more detail about dry measures, stating that in addition to the *muḥtasib*'s stamp "the name of the *imām* should be engraved on both ends so that [merchants] do not file down the top of the measuring vessel after it is tested, and thereby decrease its capacity."[77] This would be a clever means of

[72] Ibid.
[73] Ibid.
[74] See the discussion of the appointment document in Chapter 2.
[75] Al-Shayzarī, *Nihāyat al-rutba*, 19; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 85; Ibn Bassām, *Nihāyat al-rutba*, 27.
[76] Al-Shayzarī, *Nihāyat al-rutba*, 18.
[77] Ibn Bassām, *Nihāyat al-rutba*, 28.

fraud: if the *muḥtasib*'s stamp is on the bottom or on the side toward the bottom, the merchant could file down the mouth of the measure and thereby both maintain the stamp and cheat his customers by giving less grain than is due with each sale.[78] The accuracy of dry measures can be tested best with small seeds that are uniform in size, such as coriander or mustard seeds, according to the manuals.[79] Every shop should have several gradations of the dry measure, such as one-half, one-fourth, and one-eighth.[80]

All three manual authors insisted that the *muḥtasib* inspect weights and measures, especially when merchants are not expecting it.[81] This kind of provision can be read in light of the above description of the *dār al-ʿiyār* of Cairo to suggest that the *muḥtasib* would inspect the merchants in the markets, and if he suspected that a scale, weight, or measure was incorrect, but could not assess it properly on the spot, he would take the merchant and the equipment to the *dār al-ʿiyār* for examination.[82] The kind of measuring cup found by Ibn al-Rifʿa at the *muḥtasib*'s stand when he took the position in Fustat also indicates the general concern of *muḥtasib*s with making sure consumers got their full due in transactions, but still there were many opportunities in the sales process for merchants to give their customers less than they purchased, either intentionally or accidentally. This case of the standard measurements, along with the weighers dispatched in the previous case, indicates that ensuring accurate scales, weights, and measures was a persistent concern for the *muḥtasib*s.

[78] Perhaps the engraving inside Ibn al-Rifʿa's standard measuring cup was done in the same manner, although he did not specify precisely where the language was placed.

[79] Al-Shayzarī, *Nihāyat al-rutba*, 20; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 85–86; Ibn Bassām, *Nihāyat al-rutba*, 183.

[80] Al-Shayzarī, *Nihāyat al-rutba*, 20; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 85–86.

[81] Al-Shayzarī, *Nihāyat al-rutba*, 19–20; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 85–86; Ibn Bassām, *Nihāyat al-rutba*, 27–28.

[82] In Edward William Lane's observation in the early nineteenth century, the *muḥtasib* checked the weights and measures on the spot, requiring an additional person just to carry the scales:

> The markets of Cairo, and the weights and measures, are under the inspection of an officer called the "Moḥtesib." He occasionally rides about the town, preceded by an officer who carries a large pair of scales, and followed by the executioners and numerous other servants. Passing by shops, or through the markets, he orders each shopkeeper, one after another, or sometimes only one here and there, to produce his scales, weights, and measures, and tries whether they are correct. He also inquires the prices of provisions at the shops where such articles are sold. Often, too, he stops a servant, or other passenger, in the street, whom he may chance to meet carrying any article of food that he has just bought, and asks him for what sum, or at what weight, he purchased it. When he finds that a shopkeeper has incorrect scales, weights, or measures, or that he has sold a thing deficient in weight, or above the regular market price, he punishes him on the spot. The general punishment is beating or flogging.

Lane, *An Account of the Manners and Customs of the Modern Egyptians*, 122. If the *muḥtasib* wanted to surprise a merchant in order to test his scales and the way he was using them, approaching the merchant with a large procession led by an assistant carrying a large pair of scales would not have been very effective.

Case 6.5. Rotten birds

In 742/1341, a purveyor of dried and salted poultry (*bawārdī*) was operating in the sword-makers (*suyūfiyyūn*) market of Cairo when he was seized by unidentified individuals and brought to the *muḥtasib* of Cairo, Ḍiyāʾ al-Dīn. The salted carcasses of 1,196 pigeons and 33,000 starlings were found in this merchant's storehouse, and all of them had changed in color and state and smelled rotten. The merchant was disciplined and paraded through the town ignominiously, and all of the birds were destroyed.[83]

Normally, people ate these salted birds, but the complaint here did not seem to come from a purchaser nor is it clear that the merchant was selling these rotten products. Rather, the location of the *suyūfiyyūn* in the central market area, and not very far from the *muḥtasib*'s stand, suggests that the smell was evident to the many neighbors in the area and that they alerted the *muḥtasib* (see Map 2.1). What exactly was the wrongdoing here? Had the merchant tried to sell the birds, the problem would be that rotten food has no value and thus cannot be sold. That seems unlikely since any customer would know right away from the smell that they were inedible.

The wrongful act seems to have been the mere presence of rotting food in the market, and the possible harm that it could cause to others in the area, such as through a noxious smell. The *muḥtasib* manuals address issues of harm to neighbors from irresponsible trash disposal and other inconsiderate acts. Al-Shayzarī's provision on this topic is the most complete of the three:

> As for the streets and alleys of the city, no one is permitted to extend the wall of his home or shop into common passageways, and the same holds for any object that may harm the residents, like the open water spouts that extend from the walls in winter and other kinds of trash that is pushed into the middle of the street from houses in summer. Rather, the *muḥtasib* should order the owners of the spouts to make channels in the walls to contain the water. If anyone has an outlet running from his house into the street for trash, the *muḥtasib* should order him to close it up in summer and dig a hole in his yard in which to collect the trash.[84]

Further, al-Shayzarī and Ibn al-Ukhuwwa recognized the severe odor that can come from rotten meat and from fish in particular. In their chapters on fish fryers, both ordered that unsold fish that has rotted must be thrown away on the trash piles

[83] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:613; Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 10:72–73. These reports are unclear about the details of how these birds were discovered, how their numbers were determined, and whether it was the *muḥtasib* who destroyed them and punished the merchant. In *al-Khiṭaṭ*, al-Maqrīzī reported that the *muḥtasib* came upon the storehouse and subsequently punished the merchant and destroyed the rotten food. Al-Maqrīzī, *al-Khiṭaṭ*, 3:323. In the report in *Kitāb al-Sulūk*, however, the *muḥtasib* went to the storehouse to investigate after someone brought the merchant to him, but it does not say that he carried out the punishment.

[84] Al-Shayzarī, *Nihāyat al-rutba*, 14. Ibn al-Ukhuwwa and Ibn Bassām's manuals contain some aspects of this provision. Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 78–79; Ibn Bassām, *Nihāyat al-rutba*, 19–20.

outside of town.[85] The clear implication of this rule is that the smell is so strong and offensive that rotten fish should not be discarded within the crowded city.

In this case of salted birds, which were of no use to humans or animals, the *muḥtasib* destroyed them. If they had been allowed to remain, the growing smell could have produced a public health problem, along the lines of trash sitting in public walkways. He may have sent them to a trash pile outside of town, as the manuals recommend for rotten fish. As punishment for the wrongdoing, the *muḥtasib* determined (but did not necessarily carry out personally) the punishment of parading the merchant through town in disgrace (*tashhīr*). As discussed with regards to Case 5.3, *tashhīr* is one of the means of punishment available to the *muḥtasib*, according to the appointment decree, which instructs him to parade certain offenders through the streets to make their misdeeds known. The individual was usually placed on a riding animal, such as a donkey, and might have been subjected to accompanying demeaning treatment or even physical beatings or lashings.[86] It is not clear whether this merchant suffered the additional humiliation of nakedness (or near-nakedness), as the unfortunate Christian scribe did.

The *muḥtasib*'s protection of consumers here did not mean deterring a merchant from cheating customers but rather preventing a diffuse communal harm caused by noxious decayed food, the smell of which must have upset the neighbors. Further, failure to act here would have set a bad example in suggesting that society—and the *muḥtasib* in particular—might tolerate the storage of rotten food or, even worse, its sale. Through *tashhīr*, a punishment that had such a public component, this *muḥtasib* made it clear to all that he would not let off lightly merchants with negligent practices such as these. The merchant does not seem to have tried to offer a defense—caught in a situation of his own negligence, he suffered the penalty but was not prevented from returning to his business, hopefully more attentive to his food supplies from the experience.

Case 6.6. Making a market for Mamluk soldiers

At the end of 922/beginning of 1517, the advance troops of the Ottomans moved southwards from Gaza and reached al-ʿArīsh, posing a grave threat to Egypt (see Map 1.1). In what were to be the final days of the Mamluk regime, rumors about the approaching Ottomans were circulating in Cairo. The newly declared sultan Ṭūmānbāy announced a compulsory full-dress review (including weapons) of all the troops at Raydāniyya, northeast of Cairo, near al-Waṭāq (see Map 1.3).[87] Merchants began to transfer their goods and money from shops in the marketplace to places of safekeeping; people who lived outside Cairo moved inside

[85] Al-Shayzarī, *Nihāyat al-rutba*, 33; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 111.
[86] See also Lange, "Legal and Cultural Aspects of Ignominious Parading (*tashhīr*) in Islam."
[87] Ibn Iyās, *Badāʾiʿ al-zuhūr*, 5:137. The chronicle report also describes the sultan's efforts to introduce new military technology at this final hour.

the city's walls; and Cairenes prepared themselves for the anticipated difficult period ahead.[88]

The sultan ordered the *wālī* of Cairo to call upon the sultan's soldiers to go immediately to al-Waṭāq, and he then announced that anyone who delayed would be summarily hung outside the door to his home. The sultan thought this threat to be necessary because he had learned that a group of soldiers were spending most of their time at their homes in Cairo, going out to al-Waṭāq only in the morning in order to be seen by the sultan, and then returning home for the night. In response, the sultan required them to stay out at al-Waṭāq full-time.

The sultan also ordered the *muḥtasib* Māmāy to demand that the merchants of Cairo, in particular the sellers of oil, bread, cheese, and meat, transfer goods to al-Waṭāq and establish a market there to sell to the soldiers.[89] The need for merchants to sell these basic food items to the soldiers meant that the sultan was not providing them to his troops, and they naturally returned home at night for meals. Even though a customer base was developing at the encampment, the merchants had not found it desirable to set up a market there. In an attempt to solve this problem, the merchants were called into the service of the sultanate in its final weeks. The *muḥtasib*'s involvement here did not involve the details of weights and measures or appropriate food sold in the market, but rather was driven by matters relating to strategy and defense with the goal of simply making provisions available to soldiers.

Although the report does not discuss the merchants' responses, setting up a market amidst the troops on what could become the front line surely was inconvenient and even dangerous. Further, at what price would they have to sell their goods, and how much control over prices would they have in a military enclave? They were not called upon to modify their behavior based on any particular rule of doctrine, but rather were ordered to take action based on the sultan's power. The *muḥtasib* Māmāy served here as the sultan's spokesperson—indeed, he was a soldier himself. His ability to ensure that the merchants complied depended upon the enforcement resources at his disposal. At a time when forces were being sent out of the city, there may not have been many soldiers left in Cairo for Māmāy to call upon for assistance, if needed, in coercing merchants to take their goods and set up stands in the encampment of soldiers.

Conclusions

The cases in this chapter show the *muḥtasib*s engaged in core matters of consumer protection—regulating food and drink sold in the markets, working to ensure that weights, measures, and scales were accurate and were used properly, helping customers to get their money's worth when they paid for entry into the bathhouse, and protecting the population from annoyances (and potential dangers) in the market in the form of decaying food and excessively hot lanterns. With the

[88] Ibid., 5:139. [89] Ibid., 5:140.

exception of the last case, setting up a new market, which the sultan requested the *muḥtasib* to do, the *muḥtasib*s in this chapter acted on their own initiative. They also acted alone—the sultan, the *wālī*s, judges, or other officials of the sultanate were largely absent. The *muḥtasib*s employed their own assistants (as in Case 6.1) or delegates (the weighers in Case 6.3) to help carry out the broad task of ensuring fairness in the markets and protecting consumers in particular.

The actions of the *muḥtasib*s, again with the exception of the last case, were based on doctrinal rules on which there was a high degree of agreement. General rules contained in doctrinal books (such as the requirement to give full weight and measure in a transaction, a rule that comes from the Quran) were elaborated upon in the *muḥtasib* manuals. Ibn al-Ukhuwwa, for example, took the rule that requires food to be weighed in the sale and elaborated upon the types of scales that should be used and how the *muḥtasib* can ensure that the weighing is done properly, including a specific mention of the types of weighers the *muḥtasib* dispatched in Case 6.3. In contrast, the final case involved the sultan making a strategic decision about how to defend against the Ottomans, which included finding ways to ensure that the soldiers stayed in the encampment instead of returning home at night. This was not a decision based on any rule of doctrine, but rather a clear case of the sultan's policy powers in action.

In terms of punishment, only Cases 6.2 and 6.5 offer insight; the other cases do not explain what the *muḥtasib* did to those who defied his orders, such as bathhouse attendants who might not have complied with the order about towel size or merchants who might have been selling adulterated food or drink. The *muḥtasib*s in Case 6.2 punished (*taʿzīr*) the sellers of impermissible meat, but the historians did not provide any details—*taʿzīr* refers to discretionary punishment generally. Did they use whips or other means of force? Did they merely verbally chastise? The merchant who was storing rotten food in Case 6.5 received what might have been the severest penalty in that his reputation was intentionally harmed through ignominious parading throughout the city. Further details unfortunately are not given, such as whether he was stripped down to his *ʿawra*, whether he was paraded on an animal such as a donkey, or whether the *muḥtasib* called out language of warning to the crowd as he led the merchant through the town.

Many contextual factors influenced how the *muḥtasib*s responded in these cases. The geographical location of the new market in the first case surely affected the *muḥtasib*'s response, and perhaps Cairo's *muḥtasib* had not routinely crossed the canal prior to that time (or sent an assistant) to investigate these areas. When Nubians (who may have been Christians) first started to gather around this particular mosque, drinking beer, it did not rise to the level of the *muḥtasib*'s concern, although the same activities in Cairo's central market areas might have. The development of a big market, however, did catch his attention and he sent an assistant. A large market would draw customers of all kinds from this area, and they could be cheated or harmed by inaccurate weights and measures or adulterated food—all of the typical concerns a *muḥtasib* would have with any market.

The backdrop of the plague in the second case seems to have influenced how the *muḥtasib*s of Cairo and Fustat dealt with the sale of impermissible meat. They did

not confiscate and destroy the meat (as the *muḥtasib* did with the rotting birds in Case 6.5), although they could have done so since it had no value, nor did they punish the consumers, even though their purchase of impermissible food was also wrongful. The possibility that the famine rose to the level of creating a legal necessity to consume otherwise impermissible food was not discussed in the reports, but perhaps these two *muḥtasib*s were sufficiently knowledgeable about the doctrine and influenced by the context to excuse the consumers altogether (and even respond lightly to the merchants, whose sales probably would not be covered by the doctrine of necessity). The appointment of a rival in Case 6.3 seems to have been the prompt for the trio of orders that the *muḥtasib* issued, showing that in some cases, competition among officials might have benefited the population.

The *muḥtasib*s encountered little resistance in these cases except from the sellers of impermissible meat, who continued selling even when punished; given the background of a serious famine, however, the *muḥtasib*s may not have actually wanted them to cease selling (nor could they simply ignore them). The *muḥtasib*'s ability to assist consumers as seen in this chapter was possible in large part due to this general absence of resistance. Dishonest merchants who wanted to use their own rigged scales might have been able to continue to do so, but they did not protest en masse when the *muḥtasib* sent out the weighers, nor did they completely refuse to use standard weights and measures, as far as reported. Further, it is not clear that ordinary merchants had sufficient power to resist the *muḥtasib*, especially when the sultan took a personal interest in the matter. But high-ranking soldier-merchants did have extensive power, and in the next chapter, the *muḥtasib* has to deal with the grain-owning amirs, whose interests often conflicted with those of the population seeking to buy affordable daily bread.

7

The markets for essential bread

Of all the commercial transactions that consumers engaged in, the purchase of bread may have been the most crucial for physical survival.[1] The majority of dwellers in Cairo and Fustat bought loaves of bread daily from the bakeries, and this formed their main—and in some cases, only—source of food.[2] The typical process of bread-making in the market began with millers purchasing grain from wholesalers or brokers, many of whom were amirs. The millers ground this grain into flour, which they then sold to bakers, who made the dough and baked it in their ovens to form flat, round loaves.[3] The ovens were located throughout the cities, although it is impossible to know whether they were sufficiently distributed so that everyone had a bakery in close proximity, as the *muḥtasib* manuals specify should be the case.[4] Once bread was made, it could be sold to customers on the spot at the bakery or further distributed by bread carriers, who seem to have transported it on large flat trays atop their heads.[5] Consumers were dependent on the larger economic forces that affected the prices of wheat and every step of the process along the

[1] S. D. Goitein's summary of the role of bread in daily life based on the Geniza documents also captures the dependence on bread seen in the Mamluk-era chronicles: "The mind of the average man, that of the middle class included, was constantly preoccupied with providing his household with the most urgently needed life-sustaining food." Goitein, *A Mediterranean Society*, 4:235. See also Cohen, *Poverty and Charity in the Jewish Community of Medieval Egypt*, 158–169.

[2] Cohen, "Feeding the Poor and Clothing the Naked," 410–412. Bread became stale in a day and so had to be purchased frequently. Ibid., 411.

[3] Lapidus, "The Grain Economy of Mamluk Egypt," 10–11. Another production method usually reserved for the wealthy who could afford to buy grain in advance of consuming it (but also seen in Case 7.7 when consumers went outside the city to buy grain at a time when no bread, wheat, or grain was available in the city's market) involved grain brokers selling to retailers, who sold to consumers, who had the grain milled (paying a miller a fee for the service) and then prepared (or had prepared) dough that they took to bakeries to bake. Ibid., 11; Sabra, *Poverty and Charity in Medieval Islam*, 113. Such purchasers would typically buy enough grain for the coming year to avoid ongoing price fluctuations. Most people, however, could not afford the initial outlay to buy grain and had to buy bread daily instead. Cohen, "Feeding the Poor and Clothing the Naked," 411.

[4] The manuals typically instruct the *muḥtasib* to keep track of the names of the bakers and the locations of their shops, something the official is not instructed to do for other types of merchants, indicating the importance of bakers and of providing bread to the public generally. Al-Shayzarī, *Nihāyat al-rutba*, 22. Ibn Bassām further specified that the *muḥtasib*'s expert in the market should write down for the *muḥtasib* the names of the bakers and the quantity of bread they are expected to make each day, which the bakers should not be allowed to deviate from. Ibn Bassām, *Nihāyat al-rutba*, 21. Ibn al-Ukhuwwa did not instruct the *muḥtasib* to note names and sites of bakers, but wrote that it is in the public interest (*maṣlaḥa*) for each shop to bake a specified amount each day so that people do not suffer from there being too little to buy. Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 91–92.

[5] See al-Maqrīzī, *Kitāb al-Sulūk*, 3:859, for an example of this.

way of bread production. When unable to afford bread, they might become angry enough to protest to the sultan or physically attack the *muḥtasib*, raising major public policy concerns.[6] Grain prices also affected the sultan's standing with his amirs, who were paid in grain and benefited from higher prices when selling it on the market.

These complex economic relations produced conflicting demands on the *muḥtasib*: the amirs objected when prices fell, while the consumers demanded more food at lower prices. The jurists developed detailed rules concerning price-setting and hoarding of food, and the manuals presented simplified versions of these rules to the *muḥtasib*. With both strong policy and doctrinal considerations, the *muḥtasib* was pressed to accommodate many active and interested parties. The chronicles reported numerous instances of the *muḥtasib*'s involvement in pricing and availability of bread and its component parts, far more than in any other topic area. This allows for a comparative analysis among cases, and so they are presented here chronologically in order to highlight changes over time in the regulation of the markets for grain, flour, and bread, and the resulting impact on Egyptians trying to feed themselves and their families.

Case 7.1. Crisis at the Fustat granaries

At the beginning of the month of Rajab in 736/February 1336, the price of wheat rose from fifteen *dirham*s per *irdabb* to twenty and then to thirty in a short period of time, causing tremendous concern among the population.[7] The price continued to rise, and when it reached forty *dirham*s per *irdabb*, the amirs and others with grain stocks refrained from selling, anticipating a continuing rise in price. Sultan al-Nāṣir Muḥammad, at this point near the end of his long third term (1310–41), feared the consequences of such dramatic inflation. When wheat reached fifty *dirham*s per *irdabb* he called for Najm al-Dīn, the *muḥtasib* of Cairo, and rebuked him. The sultan did not replace him, though, but supplemented his work by empowering the *wālī* of Cairo, ʿAlāʾ al-Dīn al-Marwānī, to act alongside him.[8]

The *wālī* did, indeed, take action. He whipped a number of millers and bread bakers, and the situation worsened. Bakeries in Cairo and Fustat closed, making bread very difficult to find. People crowded around each bakery in such force that the *wālī* had to position guards to keep the peace.[9] The sultan ordered that grain be brought from Gaza, Karak, Shawbak, and Damascus (see Map 1.1), and it was announced in Cairo and Fustat that wheat was not to be sold for more than thirty

[6] In the cases studied in this chapter, it is very difficult to discern how the prices of bread related to the costs of other household expenses or to income levels, and the analysis here mainly focuses on whether bread was considered by the population to be affordable and available, as indicated by their actions. Using salary figures for servants at institutions such as mosques and *madrasa*s, as specified in the associated *waqf* documents, Adam Sabra innovatively related income levels to bread prices throughout the Mamluk period. See Sabra, *Poverty and Charity in Medieval Islam*, 116–133.

[7] An *irdabb* is a dry measure of about 90 liters. Goitein, *A Mediterranean Society*, 4:235.

[8] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:394. Al-Maqrīzī described this *wālī* as an oppressive tyrant.

[9] Al-Maqrīzī, *Ighāthat al-umma*, 33–34; Allouche, *Mamluk Economics*, 48.

*dirham*s per *irdabb*. Any merchant who sold wheat for a higher price would have his property confiscated. ("Property" may refer to the profit, the sale amount, or all of his grain.) In order to avoid this set price, the amirs, along with the grain brokers, refrained from selling at all, and the situation only degenerated. Brokers began secretly selling for sixty or seventy *dirham*s per *irdabb*, and the amirs took grain from their storehouses on the pretext that it was to supply the daily needs of their households. In fact, they were selling it.[10]

The sultan was distressed by the people's suffering, but he knew that the amirs controlled most of the grain. He summoned Ḍiyāʾ al-Dīn, who had a good administrative record as comptroller of both the Manṣūrī hospital and the pious endowments (*nāẓir al-awqāf*), and appointed him *muḥtasib* of Fustat. Ḍiyāʾ al-Dīn went to Fustat with the amir Sayf al-Dīn Alakuz. The *muḥtasib* took inventory at the many grain storehouses owned by amirs, recording how much each amir held and how much he would need to provide for his household and animals until the next crop came in. Then he sealed all of the storehouses, summoned the brokers, guards, and grain measurers, and made them swear that they would not open the storehouses except with the *muḥtasib*'s permission.[11]

Every day Ḍiyāʾ al-Dīn went to the storehouses and took out grain, which he sold to the millers at thirty *dirham*s per *irdabb*, the sultan's maximum price. Brokers of the amirs Bashtāk and Qawṣūn were violating these rules, however, and selling for more than thirty. The *muḥtasib* called upon Amir Alakuz, who beat the brokers with whips and paraded them ignominiously through the streets. When the sultan was informed of their transgression, he, too, punished them severely. After that, no amir dared open his storehouse without the *muḥtasib*'s permission.[12]

At the same time, the sultan ordered the regional governors to take all available grain to Fustat, for which they would be paid thirty *dirham*s per *irdabb*. It was announced in Cairo and Fustat that anyone with stored grain must sell it for the set price. Despite these measures, some amirs were still hoarding their grain or selling outside of the established market. The people who lived near these storehouses took action, either raiding the amirs' supplies or turning them in to the *wālī*, who then took the grain and distributed it to the millers.[13] A witness was sent to each oven to monitor the amount of wheat brought to it, and efforts were made to ensure equal distribution of bread around the city. The people's agitation decreased, as did the whippings of millers and bakers. The arrival of shipments of grain from Damascus and then Upper Egypt brought the crisis to an end.[14]

This case involves the related but separate doctrinal issues of price-setting and hoarding. First, when the amirs and other grain merchants refused to sell when the price reached forty *dirham*s per *irdabb*, expecting that prices would continue to rise, the situation could possibly be characterized as one of hoarding. The subsequent announcement that wheat should not be sold for more than thirty *dirham*s was a price-setting measure. Even after that announcement, some amirs continued to

[10] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:394.
[11] Ibid., 2:394–395.
[12] Ibid., 2:395.
[13] Ibid., 2:395–396.
[14] Ibid., 2:396.

refrain from selling, again arguably hoarding. When the *muḥtasib* then sealed the storehouses and personally took control of them, selling from them at the announced price of thirty *dirham*s, he went beyond mere price-setting (as defined by most jurists) and actually required sales at that price, an aggressive variation on price-setting, or, characterized another way, a remedy for hoarding accepted by some jurists.

The *muḥtasib* manuals contain relatively brief provisions on these two topics. According to al-Shayzarī, "the *muḥtasib* is not permitted to impose prices (*tasʿīr*) of goods (*baḍāʾiʿ*) upon their owners, nor require them to sell at a set price."[15] There are two components of al-Shayzarī's short provision. First, the imposition of prices of goods means the determination by the *muḥtasib* of a price for that good, such that if a merchant wants to sell, he should do so at that price. This is the typical definition of price-setting.[16] The second part deals with requiring merchants to sell at the price that is set, which is a more aggressive action than the first, because the merchants do not have the option of refraining from selling if they do not like the established price. Both of these actions are forbidden, according to al-Shayzarī. Ibn Bassām's rule on price-setting tracks al-Shayzarī's language: "The *muḥtasib* is not permitted to impose prices of goods upon their owners, nor require them to sell at a set price."[17]

After this initial statement, al-Shayzarī cited a *ḥadīth* as support, departing from his usual cursory style that does not reference proof texts. This well-known *ḥadīth* states that when prices were high in the Prophet's time, and people asked him to set prices for their benefit, he refused, stating, "Only God establishes prices, and I want to meet God without anyone claiming restitution from me because of an injustice I committed to person or property."[18] Ibn Bassām cited the same *ḥadīth*. The proof text is significant because for every other topic both authors stated legal conclusions without explaining the basis for the rule. Conflicting opinions on an issue of significant social and economic concern seem to have made both al-Shayzarī and Ibn Bassām bolster their conclusions with a proof text.

Consistent with his general style, Ibn al-Ukhuwwa's discussion of price-setting was much longer. His provision begins categorically: "The *muḥtasib* is not permitted to impose prices of goods upon their owners, because God is the one who establishes prices, nor may the *imām* or *wālī* [both in the general sense of leader] act freely in this matter [of price-setting]. If this occurs—except in years of dearth (*fī sinīn al-qaḥṭ*)—it is forbidden."[19] Citing Mālik, Ibn al-Ukhuwwa continued: "If the *imām* sees a public benefit (*maṣlaḥa*) in [the price-setting], then he is permitted to do it."[20] He concluded the discussion of price-setting with the

[15] Al-Shayzarī, *Nihāyat al-rutba*, 12.
[16] Al-Zuḥaylī, *al-Fiqh al-islāmī wa-adillatuh*, 4:2695.
[17] Ibn Bassām, *Nihāyat al-rutba*, 18.
[18] Al-Shayzarī, *Nihāyat al-rutba*, 12. Abū Dāwūd, *Sunan Abī Dāwūd*, 5:320–321 (*ḥadīth* 3450); Ibn Māja, *Sunan Ibn Māja*, 2:741–742 (*ḥadīth* 2200 with a shortened version in 2201); al-Tirmidhī, *al-Jāmiʿ al-kabīr*, 2:582 (*ḥadīth* 1314).
[19] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 64.
[20] Ibid. This is a summary characterization of the Mālikī view, however, rather than a specific quote from Mālik.

hypothetical: "If we say that price-setting is permissible, and the *imām* sets prices and the people sell at that price, then that is good. But if they violate that price, is the sale valid? The correct view is that the sale is valid but [the *muḥtasib*] punishes them (*taʿzīr*) for the violation."[21]

Doctrinal works show many more complexities than presented by Ibn al-Ukhuwwa, although he was accurate in suggesting that the Mālikī school allows price-setting in a wider range of circumstances than the other schools do. The general rule, agreed upon by all four Sunni schools, prohibits the setting of prices on goods, with school-specific exceptions.[22] In general, the Shāfiʿīs and Ḥanbalīs adhere most strictly to this general rule,[23] although some from within both schools allow price-setting in times of high prices.[24] The Ḥanafis allow the ruler to set prices of food if necessary to prevent harm to the general public, such as when merchants raise their prices exorbitantly and the rights of Muslims can be protected only through price-setting.[25] The Mālikīs allow price-setting when it is needed to prevent harm to the population and thus serves the public interest (*maṣlaḥa*).[26]

As for hoarding, the manuals agree: "If the *muḥtasib* sees someone who has hoarded essential food, which means buying when prices are high (*waqt al-ghalāʾ*) and waiting with it, and then its price rises, the *muḥtasib* must force him to sell it, because hoarding is forbidden, and it is required to prohibit people from doing what is prohibited."[27] As proof for this rule, al-Shayzarī cited the *ḥadīth*: "The one who brings food to the market is blessed, and the one who hoards it is cursed."[28] Ibn al-Ukhuwwa's proof text is the Prophetic *ḥadīth*: "Whoever hoards food for forty days, then gives its value as a charitable gift, the gift does not serve as atonement for the hoarding."[29] After mentioning *ḥadīth*s with similar meaning, Ibn al-Ukhuwwa added an exception to the hoarding rules by quoting the *ḥadīth*: "Whatever the importer imports himself, in summer or in winter, is covered by ʿUmar's rule: 'Let them sell however God wants, and let them refrain from selling however God wants.'"[30]

[21] Ibid.

[22] Al-Zuḥaylī, *al-Fiqh al-islāmī wa-adillatuh*, 4:2695–2696; "Tasʿīr," *al-Mawsūʿa al-fiqhiyya*, 11:302.

[23] Al-Shīrāzī, *al-Muhadhdhab*, 3:145; al-Nawawī, *Rawḍat al-ṭālibīn*, 3:413; Ibn Qudāma, *al-Mughnī*, 4:164.

[24] Ibn al-Rifʿa (see his biography in Chapter 2) allowed price-setting in times of high prices (*waqt al-ghalāʾ*). Al-Zuḥaylī, *al-Fiqh al-islāmī wa-adillatuh*, 4:2696. See also Ibn Qayyim al-Jawziyya, *al-Turuq al-ḥukmiyya*, 355.

[25] Al-Marghīnānī, *al-Hidāya*, 4:93; Shaykhzāda, *Majmaʿ al-anhur*, 4:215.

[26] Al-Bājī, *al-Muntaqā*, 6:351; Ibn ʿAbd al-Barr, *Kitāb al-Kāfī*, 2:730; al-Zuḥaylī, *al-Fiqh al-islāmī wa-adillatuh*, 4:2696.

[27] Al-Shayzarī, *Nihāyat al-rutba*, 12; Ibn Bassām, *Nihāyat al-rutba*, 18–19; Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 65. This is the Shāfiʿī rule. The manuscripts of al-Shayzarī's manual contain a discrepancy in the word *ghalāʾ*, with some containing the phrase "*waqt al-rakhāʾ*" (at a time of low prices). The editor of al-Shayzarī's manual chose to use "low prices," but I am using "high prices" because it is consistent with the Shāfiʿī rules that al-Shayzarī otherwise expressed. The differences among the manuscripts for this one word suggest an effort to loosen slightly the narrow Shāfiʿī definition of hoarding.

[28] Ibn Māja, *Sunan Ibn Māja*, 2:728 (*ḥadīth* 2153).

[29] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 65–66.

[30] Ibid., 66. The issue of importers is discussed in Case 7.4.

The Sunni schools of law have different definitions of hoarding. The manuals present the Shāfiʿī definition: purchasing essential food at a time of high prices and then holding it, waiting for its price to increase.[31] For the Ḥanafīs, hoarding is buying food and holding it such that it harms the people,[32] and for the Ḥanbalīs, it is buying essential goods and holding them such that the market supply is constrained.[33] The Mālikīs have the broadest definition: storing goods in order to sell them later when market fluctuations would allow for a profit,[34] which suggests that the hoarder does not need to have purchased the goods nor does the time of acquisition need to have been a moment of high or rising prices. For Mālikīs and some Ḥanafīs, the definition is not limited to essential food. In all four schools, food that a family has for its own personal use is not subject to the rules of hoarding.[35]

Given these general doctrinal rules, what remedies are available to the sultan? For hoarding, the general remedy is for the ruler to order the hoarder to sell at the price the ruler specifies, but jurists disagreed about what to do if the hoarder refuses. Some said that the hoarder should be punished personally but his goods left intact, while others allowed the goods to be taken and sold, with the hoarder receiving either the value of the goods or repayment in kind if the goods become available. In the manuals, the *muḥtasib* is instructed to force the hoarder to sell the goods, which may mean seizing and selling if the hoarder refused. When the goods are forcibly sold, the hoarder is typically allowed to keep an amount of the goods for himself and his family.[36] In the present case, the *muḥtasib* seized the grain and sold it on behalf of the amirs, presumably paying them the thirty *dirham*s per *irdabb* sale price, and the amirs were allowed to keep the amount that they needed for their family and animals until the next harvest.

As for price-setting, the associated remedy usually gives the ruler less power than with regard to hoarding. Even when price-setting is allowed, jurists disagreed about the remedy for a merchant who refuses to sell at that amount, either by refraining from selling altogether or by selling at a higher price. Ibn al-Ukhuwwa, for example, posed the question of what to do with a seller who sells above the set price, and determined that the sale is still valid and that the merchant should be personally punished. Even the Mālikīs, who allowed the use of price-setting more liberally than most other jurists, did not have a clear view that allowed the ruler to compel merchants to sell at the set price.

In the present case, the grain-holding amirs did not purchase the grain, or at least not all of it; they received it as payment for their service, as described in Chapter 1.

[31] Al-Shīrāzī, *al-Muhadhdhab*, 3:146; al-Nawawī, *Rawḍat al-ṭālibīn*, 3:413; al-Ramlī, *Nihāyat al-muḥtāj*, 3:472.

[32] *Al-Fatāwā al-hindiyya*, 3:213. The purchase has to be made in the town; purchases made substantially outside the town that are brought into it are not covered by the definition of hoarding. Ibid.

[33] Ibn Qudāma, *al-Mughnī*, 4:167.

[34] Al-Bājī, *al-Muntaqā*, 6:345.

[35] See, for example, al-Anṣārī, *Asnā al-maṭālib*, 4:93.

[36] Al-Qalyūbī, *Qalyūbī wa-ʿUmayra*, 2:186; al-Marghīnānī, *al-Hidāya*, 4:93.

Even if the amirs did purchase some of their grain, there is no evidence that the purchases took place at a time of high prices, thus two elements of the Shāfiʿī definition are missing, but elements of the Mālikī rule seem to have been met. However, in all four schools the hoarder is contrasted with the importer, in the sense that the wrongful act prohibited as hoarding is acquiring food from within the local market and then holding it, taking out of circulation food that would otherwise be available for purchase. The importer, by contrast, is someone who brings food into the market that would not have been available otherwise.[37] The amirs, then, seem like importers—the produce from the farms outside the city that is owed to them as part of their service to the sultan is brought into the city by the amirs or at their request and stored in their storehouses. Characterized this way, it is not clear that the hoarding doctrine of any of the four Sunni schools would cover the situation of the amirs, in which case the limited options under the heading of price-setting were the only available mechanisms to address their behavior.

When determining whom to task with dealing with the problem of rising prices at the beginning of this event, the sultan made some strategic personnel choices. He did not replace the *muḥtasib* of Cairo, but reinforced him with the *wālī* of Cairo, who for all practical purposes superseded him.[38] The position of the *muḥtasib* of Fustat was the important one here, and the sultan recruited an individual who was known for his capabilities. The sultan's choices also reflected the demands produced by geography. It was in Fustat that the real action took place, because the port and adjacent storehouses there were needed to supply both Cairo and Fustat, as indicated on Map 2.2. Al-Maqrīzī reported that grain arrived at the docks of Fustat, not those of Cairo, and Fustat was a significant port for grain arriving from Upper Egypt at that time.[39]

Also significant is the relationship between Cairo's *muḥtasib* and *wālī* and between the *muḥtasib* of Fustat and Amir Alakuz. Neither *muḥtasib* carried out the heavy punishments themselves; they had these tough men for that task. It was fairly typical for *muḥtasib*s to take care of light punishments, but to turn the offender over to someone else, such as the sultan, an amir, or a *wālī* for more significant discipline. Some *muḥtasib*s were more comfortable with personally carrying out the harsher physical penalties than others. Here, Cairo's *wālī* first whipped millers and bakers, but that did not lead to an increase in bread supply. Then the new *muḥtasib* of Fustat called upon the amir Alakuz, who beat the brokers of the hoarding amirs (but not the amirs themselves, who were presumably considered out of the *muḥtasib*'s and *wālī*'s reach due to their high status) and even paraded the brokers ignominiously, a punishment already encountered several times in previous cases.

[37] See Case 7.4 below.

[38] In addition to the apparently lesser role of Cairo in this crisis, the identity of the *muḥtasib* of Cairo could have had something to do with his holding on to his position. He was the cousin of the two preceding *muḥtasib*s of Cairo, which is unusual because *muḥtasib*s were generally not related to one another; the position clearly was not an inherited one.

[39] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:396. Hanna, *An Urban History of Būlāq in the Mamluk and Ottoman Periods*, 16.

The sultan played a significant role in this event, and at this point in his reign he was better placed than some of the sultans discussed below to take decisive measures to improve the situation. He attended carefully to price changes and made the major decisions himself. The price doubled from fifteen to thirty *dirham*s, and when it reached fifty the sultan reprimanded Cairo's *muḥtasib* and instructed the *wālī* to get involved. The sultan determined that the price of wheat should remain at thirty *dirham*s and his concern seemed to be overall public welfare. Although the sources do not explain the reasons for this choice, a price of thirty *dirham*s seems to have been considered a level that would not result in bread prices beyond what people could afford and yet would also give merchants a fair profit, such that the crisis could resolve itself if this price held. *Fiqh* rules also suggest the significance of doubling; one of the circumstances in which price-setting is permissible, according to the Ḥanafīs, is when owners of goods are grossly overreaching in their pricing and the rights of Muslims can be protected only through price-setting. One view is that the guideline for grossly overreaching in pricing is doubling the amount of the value.[40]

This case shows the sultan setting a price and putting his full efforts into getting merchants to make sales at that price, which included supporting the *muḥtasib* when he confronted and indeed overcame the resistance of the amirs. Some doctrinal rules of price-setting and hoarding may have supported the sultan's and *muḥtasib*'s actions here, and there appears to have been some awareness of and attention to the doctrine. Most importantly, the sultan was able to draw in new grain supplies from the provinces. The goals of the sultan and *muḥtasib* aligned fairly well in this case, allowing for a comprehensive solution to a difficult problem, even as the lack of details does not allow for a precise determination of how each step along the way might have been viewed by the jurists.

Case 7.2. The amirs force higher grain prices

In 738/1337, the prices of agricultural produce decreased to the point that an *irdabb* of wheat from Upper Egypt was sold for ten *dirham*s, an *irdabb* of wheat from Lower Egypt for eight *dirham*s, and beans and barley for six *dirham*s per *irdabb*. Even at these prices, the market was stagnant. Without sales from their stocks, the amirs were not able to support their troops. High-ranking amirs forced merchants to buy their wheat for an extra two *dirham*s per *irdabb* in an effort to gain a little more money. The powerful amir al-Nashw complained about Ḍiyāʾ al-Dīn, the *muḥtasib* of Cairo, because the price of wheat was low in comparison to that of flour and bread, and he ordered the *wālī* of Cairo to summon the *muḥtasib* and the millers to work out an average price for wheat. After that, the price ratio of wheat to bread nearly returned to normal.[41]

[40] Shaykhzāda, *Majmaʿ al-anhur*, 4:215.

[41] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:437. Ḍiyāʾ al-Dīn was replaced in Fustat six months after his appointment in Cairo, presumably because holding the position in both cities simultaneously was too much for one person, and he seems to have proven himself in Fustat such that the sultan "promoted" him to the larger jurisdiction of Cairo. Rarely did one person hold both offices at the same time.

As explained in Chapter 1, the amirs were paid in wheat, much of which was sold on the market to generate revenue to acquire other products they needed. This explains their interest in keeping the price of grain high. Unlike Case 7.1, however, it was not the entire production chain for bread that was affected, but rather the millers were buying cheap wheat and then selling that flour at a higher price. The price of bread was commensurate with the price of flour, and yet bread must not have been priced too high (or in short supply), since there do not seem to have been complaints by consumers about bread prices or availability.

Al-Nashw did not call for prices of wheat to be set at a higher point—he called for a negotiation between the *muḥtasib* and the millers with the goal of getting the millers to agree to pay more for wheat. It is difficult to know whether al-Nashw intentionally avoided calling for set prices, knowing that there was scant legal justification for it, or whether his approach was more practical. Setting prices for the millers could result in their protest—perhaps they would refuse to purchase wheat from the amirs at all, and either stop production or seek other suppliers, such as importers who might happen to arrive at the docks just in time to supply them at a reasonable price. If they could be brought to an agreement on prices, with the encouragement of, or under pressure from, the *muḥtasib*, they might actually buy wheat at those prices, resulting in a situation that suited the amirs and was at least tolerable to the millers.

The idea of a negotiated price agreement is found in the legal rules of price-setting. While the jurists disagreed about when price-setting is permissible, they tended to agree about how it is to be accomplished when it is permissible. The *muḥtasib* or ruler should not impose an arbitrary amount, but rather the overarching concerns should be fairness and the welfare of both seller and buyer: the seller must not be deprived of profit nor may the seller be allowed to harm society. The Mālikīs specified that the ruler should gather the relevant merchants together and determine the price in consultation with them, asking them, for example, what they paid for the particular good and what they wanted to sell it for, with the aim of finding a reasonable middle ground.[42] The report does not provide details of what took place when the millers and *muḥtasib* met to work out a price, but one would expect that the millers argued that they needed to be able to make a profit, even if their profit margin was going to be reduced.

While the sultan was the *muḥtasib*'s superior on the policy side, sometimes powerful amirs stepped in and directed the *muḥtasib* themselves, either with the sultan's approval or acting as his rival. The power of the amirs, which was tangible, was often used for their personal benefit. *Muḥtasib*s caught between the sultan and an amir who was in the process of challenging the throne could suffer loss of their job or physical retaliation, depending on whether they supported the party who emerged victorious from the conflict. By the time of this case, al-Nashw had an ample reputation as an oppressive amir and obeying his command was a reasonable reaction by both the *muḥtasib* and the millers; the millers might not

[42] Al-Bājī, *al-Muntaqā*, 6:351–352; al-Zuḥaylī, *al-Fiqh al-islāmī wa-adillatuh*, 4:2696.

have suffered too much as a result of the price agreement.[43] Unfortunately for the consumers, the agreement had nothing to do with providing them with lower bread prices, although perhaps by preventing a crisis that could have developed between al-Nashw and the millers, the *muḥtasib* did actually serve the greater social good in this case.

Case 7.3. Underselling by merchants

A few months after Ibn al-Uṭrūsh was appointed *muḥtasib* of Cairo in 748/1348 he was greeted by a hail of stones from the people. At a time when the price of bread had increased and one *dirham* purchased only six to seven *raṭl*s, some of the bakers were selling eight *raṭl*s for one *dirham*. (One *raṭl* equaled 450 grams or approximately a U.S. pound, and one loaf of bread weighed approximately one *raṭl*.)[44] Ibn al-Uṭrūsh summoned these discount bakers and beat them. Consequently, the people were angry with the *muḥtasib* and they threw stones at his door until the *wālī* came and chased them away.[45]

Here, the *muḥtasib* actually discouraged lower prices—and effectively tried to raise them—by punishing the bakers who sold below the prevailing rate. The doctrinal rules of price-setting discussed above do not specify that they apply only when prices are high and efforts are made to lower them, although the Mālikī rule allowing for price-setting cited in Ibn al-Ukhuwwa's manual presumes that the price-setter is trying to lower prices when short supply and high demand would otherwise drive prices up. Mālikī doctrine also dealt with underselling and an official's attempt to raise prices. According to a prominent Mālikī view, the prevailing price in the market is to be respected; those who undersell are ordered to either return to the prevailing rate or leave the market. The proof text for this rule is a *ḥadīth* reporting that the second successor to the Prophet, ʿUmar, passed a man selling raisins in the market. Inquiring about the price, ʿUmar learned that it was lower than the prevailing rate. He told him: "Either raise the price, or leave the market."[46] The other schools of law tend to rely upon a longer version of this same *ḥadīth*, in which ʿUmar, after returning home from the encounter in the market with the raisin seller, reconsidered the situation, then summoned the merchant and said to him: "What I said to you today is neither a decision nor a ruling from me, rather only something that I wanted for the interest of the people of the town. Sell wherever and however you want."[47]

The manuals do not deal specifically with the *muḥtasib* attempting to raise a price. Even the verbose Ibn al-Ukhuwwa did not discuss what should happen when

[43] When he was arrested the next year, the people celebrated for three days near the Citadel. Al-Maqrīzī, *Kitāb al-Sulūk*, 2:479–480.

[44] Goitein, *A Mediterranean Society*, 4:235; Cohen, "Feeding the Poor and Clothing the Naked," 410.

[45] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:758.

[46] Al-Bājī, *al-Muntaqā*, 6:348.

[47] Ibn Qudāma, *al-Mughnī*, 4:164, for example, discussed the two versions of the *ḥadīth*, explaining how the schools of law derive their positions from them.

some merchants sell below their competition for the same product. In this case, the *muḥtasib* physically punished the under-sellers. A *muḥtasib* less inclined to physical penalties might have followed 'Umar's example and warned that if they did not raise their prices, they would not be permitted to sell in the market. Not surprisingly in this case, the people became angry, saw the *muḥtasib* as working against their interests, and threw stones at his door. His effort to protect the prevailing price of bread seems to have been to prevent the price of wheat from declining, which would have hurt the grain-holding amirs. Indeed, it was an amir, the *wālī*, who rescued him from the stone-throwing people.

The people's response indicates several important points about their involvement in negotiating rules that affected them. They followed the developments in the bread markets, knew that this *muḥtasib* had punished the discounters, and held him responsible for the results. They knew not only the identity of the *muḥtasib* but also where he lived; he was a significant and well-known official. Finally, they were not afraid to express their anger by the physical act of throwing stones at his door, suggesting that the *muḥtasib*'s status as an official of the sultan did not protect him from public displays of disapproval (although it is unlikely that the same treatment would have been given to a powerful amir like al-Nashw). And the protestors only suffered from the *wālī* chasing them away.

In this case, the ramifications of the *muḥtasib*'s actions were minimal. The people were annoyed at his manipulating the market, but at least bread was available and prices did not increase significantly as a result. In the next case, the *muḥtasib*'s actions began, as here, with what seemed like a precise act in one part of the bread production system, but the situation quickly spiraled out of control as it became clear that the entire process from wheat to bread is connected.

Case 7.4. Attempts to lower prices

Shams al-Dīn al-Damīrī's appointment as *muḥtasib* of Cairo in 776/1374 came at a time when prices were increasing because it was feared that the Nile would not rise sufficiently to water the fields for the coming agricultural season. The high prices of wheat at one hundred *dirham*s per *irdabb*, barley at sixty, and beans at fifty were troublesome to the people. A few days after Shams al-Dīn's appointment, he dispatched a number of carriers with trays on their heads loaded with loaves of bread, and they traversed Cairo up to the Citadel accompanied by drums and cymbals. It was announced that two and three-fourths *raṭl*s of bread would sell for one *dirham*, a slight decrease in price (previously, one *dirham* bought only two and one-third *raṭl*s). With this bread parade, Shams al-Dīn was clearly trying to show that as *muḥtasib* he would take charge of bread prices and make this basic product affordable. The people were happy with this display—except that subsequently bread could not be found in the markets for five days, and people crowded around the ovens in search of it.[48]

[48] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:232–233. Al-Maqrīzī also reported that the high price of bread at that time reached one and a half *raṭl*s for a *dirham*.

With the people in despair, it was ordered that more bread be made and sold without a set price. The prices of foodstuffs rose, and by the beginning of the next month wheat reached 110 *dirham*s per *irdabb*. Within two weeks, an epidemic (*wabā'*) was beginning, and many poor people died from hunger.[49] Al-Maqrīzī's use of the term *wabā'* indicates that the epidemic was more than a case of some deaths due to lack of food. The undernourished were more susceptible to the illness, which spread quickly. By the month of Ramadan, the disease had spread to the wealthy as well, and the prices of luxury goods, such as chickens and melons, had increased. Hunger and death were rampant.[50]

Two months later, new supplies of wheat arrived and bread prices decreased. When the rate of death slowed, Shams al-Dīn, who had remained in the position of *muḥtasib* throughout the crisis, again made a decision to lower the price of bread, this time with a much larger jump to eight *raṭl*s per *dirham* (the prevailing price was five and one-third *raṭl*s per *dirham*). Because of the low price of bread, the bakers were willing to pay only so much for flour, and the millers in turn refused to purchase wheat for more than eighteen *dirham*s per *irdabb*. Importers sitting at the ports refused to sell for such a low price and sailed back. The shortage of wheat in the market caused the price to reach thirty-four *dirham*s per *irdabb*. Bread then could not be found for a few days and when it became available, it was sold for less than six *raṭl*s per *dirham*.[51] With a brief mention that the epidemic thereupon decreased, al-Maqrīzī ended this long narrative on rising prices and the spread of disease.[52]

The *muḥtasib*'s two attempts to lower prices were failures. He focused on the part of the problem most visible to the people—the price of bread—and neglected to acknowledge that the price of bread depends on the price of flour, which depends on the price of wheat. He unilaterally set prices on bread at rates that seemed arbitrary, which only caused the bakers to refrain from selling. With the arrival of the epidemic, the problems grew far beyond the *muḥtasib*'s control. In fact, he seemed to be able to do little but wait for importers to arrive with much-needed wheat, in contrast to Case 7.1 when the sultan aggressively ordered wheat to be brought into the cities from the rural areas. When the importers did arrive with the wheat, however, they did not like the low price offered by the local millers—the low price that was necessitated by the price-setting order on bread—and they turned straight around.

Importers form a special category in the doctrine relating to price-setting and hoarding. The jurists generally agreed that importers are not subject to the rules of hoarding and that prices should not be set on importers.[53] Ibn al-Ukhuwwa's manual authorizes the *muḥtasib* to force hoarders to sell, with the exception of importers: "Whatever the importer imports himself, in summer or in winter, is

[49] Ibid., 3:233. [50] Ibid., 3:233–237.
[51] Ibid., 3:239. [52] Ibid.
[53] *Al-Fatāwā al-hindiyya*, 3:213–214; al-Bājī, *al-Muntaqā*, 6:350; Ibn Qudāma, *al-Mughnī*, 4:167; al-Ḥaṭṭāb, *Mawāhib al-jalīl*, 4:380. The Mālikī scholar Ibn Ḥabīb, representing a minority view, said that importers may be subject to price-setting, except on the goods of wheat and barley. Al-Bājī, *al-Muntaqā*, 6:350.

covered by 'Umar's rule: 'Let them sell however God wants, and let them refrain from selling however God wants.'"[54] In this particular case there is no mention of the *muḥtasib* trying to force the importers to sell their wheat, recognizing, it seems, that importers stood outside of the regulatory framework and that they had the right to turn around and sail away, in search of a better market.

The *muḥtasib* attempted to lower bread prices twice, and on neither occasion did it appear to be necessary in order to prevent harm or to serve the public interest. In fact, when matters were at their worst, following his first attempt at price-setting, he ordered that more bread be made and sold without a set price, perhaps in recognition that the first effort had actually been detrimental. He made his second attempt to set prices of bread after the importers had arrived and prices were actually decreasing. This *muḥtasib* was a Mālikī and may have been influenced by his school's more liberal rules on price-setting, but even then, it would be difficult to use Mālikī doctrine to provide support for his actions. The second attempt had the effect of decreasing the grain prices at the absolutely wrong moment—when importers were standing at the city's docks, ready to sell. Seeing the low prices, they chose to seek a better market for their goods.

Attempts to lower prices could be successful, as in the first case of this chapter, but they also could be very harmful, as the two efforts in this case show. The first attempt was modest but still caused the bakers to refuse to sell, and the second effort involved a price reduction of about one-third of the price for no obvious reason. In Case 7.2, the millers themselves made a determination on pricing, which seems to have avoided negative ramifications, but here the amounts assigned by the *muḥtasib* seem almost random. Finding the right price that achieved the regulator's goal without causing unintended consequences was very difficult. In the next case, efforts were not made to set specific prices but rather were left to God to determine.

Case 7.5. The *wālī* takes charge

At the end of 796/1394, the Nile failed to reach its expected level, and prices rose in anticipation of future shortages, with wheat increasing to forty *dirham*s per *irdabb*. The people shouted at the *muḥtasib* Ibn al-Burjī and complained about him to Viceroy (*nā'ib*) Sūdūn, who was Sultan Barqūq's delegate while the latter was away in Syria. According to one report, the people were on the verge of pelting the *muḥtasib* with stones. So the viceroy ordered the *wālī* of Cairo, 'Alā' al-Dīn b. al-Ṭablāwī, to take charge of prices. Ibn al-Ṭablāwī ordered the storehouses to be opened and the grain to be sold at "God's price." He threatened those who did not open their storehouses and sell within three days with seizure of their goods, presumably to be sold. The amirs' agents opened their stores and sold their grain, and the prices did come down a little.[55]

Instead of working through the office of the *muḥtasib* and supporting his authority to manage or at least monitor the situation, the viceroy told the *wālī* to

[54] Ibn al-Ukhuwwa, *Ma'ālim al-qurba*, 65–66.
[55] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:818; Ibn al-Furāt, *Tārīkh*, 9:387.

deal with the problem. *Wālī*s did not normally handle these kinds of matters, and their educational background was typically quite minimal. Ibn al-Ṭablāwī came from a civilian family of merchants; he had no record of legal education but held many bureaucratic positions, including this one, to which he was appointed in 792/1389–90.[56] His mercantile background may have given him some insight into how the markets worked, which may have prevented him from attempting to set specific prices.

The *wālī* was not merely throwing up his hands in despair—he was actually announcing the basic rule against price-setting. "God's price" is a reference to the Prophet's statement that only God establishes prices, and this *ḥadīth* appears in all three manuals, as discussed in the first case of this chapter. That a person with no known legal education would use this language shows that the awareness of this doctrinal rule ran deep among merchants and perhaps society more broadly. Calling for sales at God's price was strategic on at least two levels: it did not attempt to force grain holders to sell at a price so low that they would employ all kinds of tricks to avoid selling, and it is hard to oppose, since it is exactly what the Prophet called for. It basically urges (or even forces, as here) the merchants to sell and to do so at whatever price the market will bear.

The *muḥtasib* was bypassed in this matter for reasons that are not explained, with the viceroy ordering the *wālī* to assume responsibility for prices.[57] The historian Ibn al-Furāt commented directly on this, stating that the judge al-Baqrī, who was also the comptroller of the financial bureaus (*nāẓir al-dawla*) at that time, found fault with the *wālī* for his order to open the warehouses and sell at "God's price" and for getting involved in matters relating to *ḥisba*. The judge threatened to inform the sultan of the *wālī*'s actions. After the prices decreased a little and the people were reassured, the *wālī* ceased his involvement, and the matter does not seem to have reached the sultan.[58]

Ibn al-Furāt's addition of al-Baqrī's comment raises the issues of competing jurisdictions, professional rivalry, and even legal consciousness. The *wālī* of Cairo took action quickly once called upon, and the *muḥtasib* Ibn al-Burjī ceded his authority, but not his position, very easily. The judge's complaint shows that the *muḥtasib* had a particular recognized sphere of authority and responsibility and that violating it could raise criticism, and the judge also suggested that the sultan, too, would care about these kinds of jurisdictional intrusions. What is not known is the basis of al-Baqrī's complaint. Perhaps he was concerned with principled notions of jurisdiction or perhaps he was reacting on the basis of his experience as comptroller of the financial bureaus, fearful that if the wrong person got involved in matters of pricing, it could cause major problems with implications for the revenue stream

[56] According to Carl Petry, the position of *wālī* was a very high office for a non-Mamluk. Petry, *The Civilian Elite of Cairo in the Later Middle Ages*, 215. Perhaps because the position of *wālī* was usually held by military men, chroniclers sometimes called Ibn al-Ṭablāwī by the title of amir.

[57] Ibid. He was not actually appointed *muḥtasib*, however; Ibn al-Burjī remained *muḥtasib* until 797/1395. Al-Maqrīzī, *Kitâb al-Sulûk*, 3:773, 839.

[58] Ibn al-Furāt, *Tārīkh*, 9:387.

flowing into the treasury. The *wālī*'s actions did cause prices to decrease a little, although what that meant for the average consumer is not clear. The problem of high prices did not fully resolve itself with the *wālī*'s actions, though, and throughout the year 797/1394–5 there were reports of market volatility and high prices, leading to the next event.

Case 7.6. The problem of forced sales

At the beginning of 798/end of 1395, the price of wheat decreased to sixty *dirham*s per *irdabb* and the people were happy.[59] Then, due to forced sales (*rimāya*), the price rose to 110 *dirham*s.[60] The historian Ibn al-Furāt explained that there was a dispute between a powerful amir and al-Bakrī, *muḥtasib* of Fustat, over the forced sale of wheat at a "price in excess of the limit."[61] Al-Bakrī tendered his resignation and, in what must have been a daring move, sat in the mosque of ʿAmr b. al-ʿĀṣ in Fustat, where he said to the people: "[a powerful amir] summoned me on account of the forced sale of wheat. They had imposed it at the price of eighty *dirham*s per *irdabb*, then ninety, and the people were sad because of that. When he told me to impose it at 110 *dirham*s, I resigned."[62] The sultan, who heard about this affair while he was in the far northern Cairo suburb of Siryāqūs, summoned al-Bakrī, and reinstated him as *muḥtasib* of Fustat. He also decreed that al-Bakrī and the *muḥtasib* of Cairo should be given 10,000 *irdabb*s of wheat each to force the millers to purchase at 100 *dirham*s per *irdabb*.[63]

The price of bread remained high and its availability low, and the sultan undertook to provide large amounts of bread to the poor.[64] A major problem was the lack of additional grain coming into the market. Prices rose in both Cairo and Fustat, and for seven days bread could not be found. Wheat was sold for 175 *dirham*s per *irdabb* and flour for 200. When found, bread was sold for one *dirham* for one-fourth *raṭl* of bread. People were fighting with each other at the doors of the bakeries to get it, even at this high price.[65]

And then the event that all had been waiting for happened—ships filled with produce arrived at the docks.[66] With the arrival of a large amount of imported

[59] Ibid., 9:427; al-Maqrīzī, *Kitāb al-Sulūk*, 3:849.
[60] Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:507.
[61] Ibn al-Furāt, *Tārīkh*, 9:427. The issue here seems to be that the forced sales were too far above market value, causing extensive hardship on the part of the merchants and in turn on the consumers. This view is supported by the next part of Ibn al-Furāt's report, which indicates that the *muḥtasib* had been willing to impose sales at some above-market price, but when he was pushed to sell for higher and higher amounts, he refused.
[62] Ibid., 9:427–428. The *muḥtasib* of Cairo also resigned in the second month of 798/Nov.–Dec. 1395 but the sultan reinstated him less than a month later. Perhaps both *muḥtasib*s were protesting forced sales.
[63] Ibid., 9:428.
[64] Ibid., 9:432; al-Maqrīzī, *Kitāb al-Sulūk*, 3:853–854. This included instructing the same Ibn al-Ṭablāwī to provide bread to the poor in Cairo and Fustat. Ibn al-Furāt, *Tārīkh*, 9:432–434.
[65] Ibn al-Furāt, *Tārīkh*, 9:434–435; al-Maqrīzī, *Kitāb al-Sulūk*, 3:856.
[66] Ibn al-Furāt, *Tārīkh*, 9:435.

wheat, prices decreased, to the point that wheat was being sold for fifty *dirham*s per *irdabb* and four *raṭl*s of bread for one *dirham*.[67] But low prices created another problem—the grain importers realized that at these falling prices they would not be able to recover their capital investment and travel expenses. They stopped selling in Cairo and Fustat and went off to Alexandria, in search of higher prices. Seeing that the supply of grain was decreasing, the millers and bakers produced less bread, and realizing this, people rushed out to buy it.[68]

Finally, the people went to Sultan Barqūq and complained about the lack of food. The sultan ordered Ibn al-Ṭablāwī, the same man who called for "God's price" in the case above, to take control of the matter.[69] Sultan Barqūq specified that Ibn al-Ṭablāwī should punish millers and brokers in a particularly harsh way by nailing each to a cross (*tasmīr*) and that the *muḥtasib* of Cairo, al-Damāmīnī, should lash four of the biggest millers and bakers with whips and sticks and order them to increase the production of bread. These millers and sellers did not heed the *muḥtasib*, however, and the matter worsened.[70] It was then ordered, seemingly by the sultan, that bread should be sold for one-fourth *dirham* per loaf and the people fought one another in their attempts to purchase it, even to the point that some were killed in the process.[71]

The *muḥtasib* of Cairo, al-Damāmīnī, saw the rise in prices (one *irdabb* of wheat now cost as much as 120 *dirham*s), the lack of bread and its constituent parts, and how the city was in an uproar over the situation. He hid at home for three days for fear that people would attack him. Indeed, the *wālī* Ibn al-Ṭablāwī had to rescue him from his home and protect him from a near stoning.[72] The sultan then dismissed al-Damāmīnī and appointed Shams al-Dīn al-Makhānasī as *muḥtasib* of Cairo.[73] There were two significant aspects to this appointment. First, it was made without the payment of money. Secondly, al-Makhānasī stipulated as a condition of his appointment that he not be required to impose forced sales. The people celebrated his appointment, although the situation took some time to improve.[74]

The forced sales that started this case were essentially a tax on the merchants, because they had to purchase the goods from the sultan or amirs at the specified rate, which was above the prevailing market rate, and then sell those goods with little or no profit or possibly at a loss. The difference went to the sultan or amirs, at the merchant's expense. Unlike setting prices or forcing a hoarder to sell, no doctrinal rules offer a justification for forced sales; they were like an extra tax and were a symptom of increasing attempts by the sultan or amirs to take in revenue however they could. The *muḥtasib*s were sometimes the agents of these forced sales under compulsion, as in the case here,

[67] Ibid., 9:439; al-Maqrīzī, *Kitāb al-Sulūk*, 3:859.
[68] Ibn al-Furāt, *Tārīkh*, 9:439; al-Maqrīzī, *Kitāb al-Sulūk*, 3:859.
[69] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:859.
[70] Ibn al-Furāt, *Tārīkh*, 9:439.
[71] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:860; Ibn al-Furāt, *Tārīkh*, 9:439.
[72] Ibn al-Furāt, *Tārīkh*, 9:439–440; al-Maqrīzī, *Kitāb al-Sulūk*, 3:860.
[73] There are several variations of the spelling of his name, but this seems the most common.
[74] Ibn al-Furāt, *Tārīkh*, 9:440; al-Maqrīzī, *Kitāb al-Sulūk*, 3:860.

but what is unusual is that the *muḥtasib* of Fustat, al-Bakrī, decided that he would no longer carry out this undesirable task, and he not only announced his resignation but also his reasons in the largest mosque in Fustat. He was not objecting to forced sales in principle, it seems, but rather that once the price reached 110 *dirham*s, he considered it to be too high, beyond some threshold of reasonableness.

Very few *muḥtasib*s managed to resign (although one who did will be seen in the next case); the sultan viewed the appointments and dismissals as his prerogative and forced al-Bakrī to return to the position in Fustat. The sultan also told him that he would not be excused from executing forced sales, although he did lower the price that he would have to sell at from 110 to 100 *dirham*s per *irdabb*. The *muḥtasib* of Cairo, al-Damāmīnī, did not try to resign but simply hid at home, anticipating (probably correctly) that the desperate people of Cairo were going to hold him responsible. But the sultan had little use for such an official, and dismissed him, appointing al-Makhānasī on astonishing terms—this new *muḥtasib* was actually able to dictate to the sultan conditions of his appointment, including that he would not pay for the office and that he would not impose forced sales, which the sultan accepted. The sultan must have been desperate enough for an effective *muḥtasib* that he was willing to forgo what had come to be a standard payment from the new *muḥtasib* and the lost future profits from forced sales. Al-Makhānasī seems to have concluded that the problems in the food pricing and supply system were due in large part to the forced sales that the *muḥtasib* had carried out, and he may have known about al-Bakrī's complaints in Fustat.

In terms of prices of bread for the consumers, at the beginning of the case when sales were forced, there was a shortage of bread and its price remained high. The problem seemed to come from both the forced sales of wheat at increasing prices, which raised, in turn, the cost of flour and bread, and the general shortage of grain. In a time of shortage, the price of grain would be expected to rise; here, the additional measures of forced sales drove up prices even higher, all with unfortunate results for the consumers. When the situation became so bad that people appealed to the sultan directly, the sultan instructed Ibn al-Ṭablāwī and Cairo's *muḥtasib* to physically punish the brokers, millers, and bakers and to order them to increase production. Not surprisingly, this did not work; physical punishment could not change the fact that grain was not available in sufficient amounts. Then the sultan stepped in and simply announced a price for bread, one loaf for one-fourth *dirham*. The bakers seemed to have complied with this, selling what they had for the set amount, although there was certainly not enough bread to satisfy consumers and they fought with each other to get it.

The role of importers here created an additional complexity. Their arrival with wheat was treated as in Case 7.4—they were left alone to sell as they wanted. And they did sell, until the point that the price of wheat, and in turn bread, decreased dramatically. But once the price decreased beyond a certain point, the importers were no longer willing to sell. They knew what price they needed to receive to make a profit, taking into consideration what they paid for the wheat and their costs of travel, and once the going rate dipped below that mark, they simply stopped selling

in Cairo and Fustat and continued up the Nile to Alexandria. No efforts were made to force them to stay and sell, reflecting, it seems, the widely held view among the jurists, a view that was reinforced by the practicalities of the market, that importers were not to be regulated.

Only at one point in the case did physical punishment enter into the picture. When the scarcity of bread became so severe, the people went to the sultan to complain. This probably means that they went to the gates of the Citadel and made their voices heard; whether some actually had an audience with the sultan is doubtful. At this point, the sultan called in Ibn al-Ṭablāwī to bring his abilities to bear on the problem, and the sultan specified that he should punish the millers and brokers by *tasmīr*, which involved nailing them to a cross for a period of time and displaying them publicly. (A case of *tasmīr* will be seen in Chapter 9, where more details about the punishment were mentioned by the chroniclers.) *Tasmīr* was not explicitly a mode of execution. Those subjected to it were left in this manner for a limited period, which was enough time to suffer intensely and to be seen by all in that state, but not necessarily long enough to die, although deaths from it certainly did occur.[75]

This extreme punishment was imposed upon the grain brokers and millers, and not the average baker or bread seller. The sultan seems to have calculated that the grain brokers and some millers were at the heart of the problem, and if they could be coerced into making more wheat and flour available, the benefits would trickle down to the rest of the food supply. Other millers and bakers were not left alone, however; the *muḥtasib* beat them with whips and sticks and ordered them to increase production. This distribution of labor between the amir and the *muḥtasib* is typical—the amir carried out the more severe punishment, leaving the simpler and less involved lashings and beatings to the *muḥtasib*.

Problems with the food supply, bread in particular, became progressively more common in the last century of the Mamluk sultanate, and component parts of the system started to break down and unravel, such that a comprehensive solution to a crisis, as seen in the first case of this chapter, became unlikely. Reactions to bread crises typically focused on the immediate problem, without regard for the fact that the underlying structures to support the food supply were increasingly no longer available. The way that the *muḥtasib*s handled food crises shifted to quicker and more reactionary responses, and the functional distinction between an amir and a *muḥtasib* began to fade.

[75] Compare *tasmīr* (literally, nailing) with crucifixion (*ṣalb* or *taṣlīb*), which is one of the punishments for the *ḥadd* offense of highway robbery. For many jurists, crucifixion was a means of displaying the body after execution, while the Mālikīs considered it to be appropriate prior to an execution carried out by a stab to the chest. Peters, *Crime and Punishment in Islamic Law*, 37–38. Ibn al-Ukhuwwa used slightly different terminology, referring not to *tasmīr* but rather to a *taʿzīr* form of crucifixion (*ṣalb*) in which the perpetrator is attached to the cross while alive and left there for no more than three days; during that period, he is to be provided food, drink, and water for ablutions so that he can perform (a highly modified version of) prayers. Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 194.

Case 7.7. The sultan as *muḥtasib* of last resort

Sultan al-Mu'ayyad Shaykh went to Damascus to deal with a political challenge just as a food crisis was beginning in Cairo towards the end of 818/beginning of 1416. Wheat cost as much as 200 *dirham*s per *irdabb*, yet it stopped arriving in Cairo because the *muḥtasib*, who was also the *wālī*, detained the importers of wheat and tried to impose a sales tax on each *irdabb* of wheat they sold. Bread could not be found in the market, and people crowded around the bakeries. They denounced the *muḥtasib-wālī*, a man named al-Tāj, who asked to be removed from office out of fear for his life. The viceroy, acting on behalf of the absent sultan, dismissed him and appointed in his place a man of Syrian origin, al-Ḥalāwī. As al-Maqrīzī specified, in the position he refrained from doing that which exceeded his jurisdiction, except that he strictly forbade an increase in prices.[76] Imports were few, wheat could not be found in the market, and the city's inhabitants were suffering.

Prices were increasing all over Egypt. In upper (southern) Egypt, merchants refrained from selling because they heard that al-Ḥalāwī had forbidden price increases. People from lower (northern) Egypt went to Cairo to try to buy wheat because they did not have any. This only raised prices in Cairo, and crowding around the bakeries intensified. Fearing for his life, the *muḥtasib* al-Ḥalāwī also wanted to resign, and the viceroy removed him due to his failure to carry out the duties of the position. Al-Tāj was reappointed *muḥtasib* at a time when thousands of people gathered at the port of Cairo to demand wheat. When a grain boat arrived in Cairo, it would not dock at the shore for fear of people rushing onto it; the boat would stop in the middle of the Nile, forcing buyers to take a boat out to meet it. Twenty people ended up drowning in the effort. A number of women died from crowding at the bakeries, and the price of wheat exceeded 300 *dirham*s per *irdabb*. Since wheat could not be found in Cairo, al-Tāj traveled to nearby villages to acquire it and then sold the grain directly to the millers. Consumers also went out to the countryside in droves and bought wheat for 500 *dirham*s per *irdabb*. Al-Maqrīzī reported that he bought an *irdabb* of wheat for himself with someone's help for 600 *dirham*s. In the cities, the viceroy had to station a group of the sultan's soldiers at each oven to prevent people from crowding.[77]

At this point the sultan returned to Cairo after an absence of about four months. He announced that there would be security in the land, that prices were in "the hands of God," and that no one should crowd around the bakeries. Al-Tāj was effectively terminated from the position of *muḥtasib* when the sultan assumed it for himself. The sultan investigated the matter of prices and worked out an "average" price for wheat, which had risen to over 600 *dirham*s per *irdabb*, and said that no one should sell for more than the amount he determined.[78] The sultan acted as

[76] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:330–332.
[77] Ibn al-Ṣayrafī, *Nuzhat al-nufūs*, 2:357; al-Maqrīzī, *Kitāb al-Sulūk*, 4:332–335.
[78] Ibn al-Ṣayrafī, *Nuzhat al-nufūs*, 2:358; al-Maqrīzī, *Kitāb al-Sulūk*, 4:337.

muḥtasib for approximately three weeks before the scholar Badr al-Dīn al-ʿAynī was appointed to the position.[79]

This case provides a mirror image of Case 7.1, in which the sultan worked with the *muḥtasib* and other officials who were dealing with the crisis, using his power to bring in grain from other parts of the sultanate. Here, the sultan was away in Syria because of an uprising led against him by an amir. The relevant officials were not able to gather their resources together to solve the problem in the way that occurred in Case 7.1. In the sultan's absence, al-Tāj, who was a soldier, held the position of both *muḥtasib* and *wālī*, despite having no reported previous experience with administration or formal education beyond that given to the *mamlūk*s in their training. In Case 7.1, the sultan called upon grain storehouses in other parts of the sultanate and imported grain into Cairo. Here the opposite happened—people from outside Cairo came into the city in search of grain, making Cairo's and Fustat's problems worse. Later, al-Tāj traveled to villages outside of the city in an attempt to buy grain, but his efforts were too little and too late.

The importers at the docks and the potential importers in upper Egypt did not help to improve the situation. As seen in Case 7.4, jurists largely agreed that importers are not subject to the price regime of the local market, such that even when prices are set they should not be applied to an importer. It is not clear if the jurists would have viewed the tax levied here as functionally similar to imposing local prices upon them. Subsequently, merchants from upper Egypt refrained from selling because they heard that al-Ḥalāwī, the second *muḥtasib*, had forbidden increases in the price. They decided not to send their grain to sell, which is not a surprising result when prices are set in the city and the sultan cannot otherwise compel imports as he could in the first case. When al-Tāj went out himself to acquire wheat, the Cairenes who had some money simply followed him to the countryside, further driving up prices.

Commenting on al-Ḥalāwī's appointment to *muḥtasib*, al-Maqrīzī said that the only thing he did to exceed his jurisdiction was to strictly forbid an increase in prices.[80] Al-Maqrīzī's comment is best understood as articulating the basic Shāfiʿī rule against price-setting compounded by al-Maqrīzī's general suspicion of individuals who served as *muḥtasib* without a juristic background. Here, al-Ḥalāwī was described merely as a man from Syria who was appointed upon the recommendation of an amir. Al-Maqrīzī might have been suggesting that al-Ḥalāwī did not know enough about the rules of price-setting and indeed about Cairo's markets generally, and so made a wrong decision. But al-Maqrīzī's comment suggests that he was willing to tolerate some measure of price control, just not a strict prohibition. On another occasion, al-Maqrīzī criticized a *muḥtasib* for being too lenient on bakers and allowing prices to rise as a result; in that case, the *muḥtasib* was none other than al-Maqrīzī's personal rival for the position (and the sultan's successor *muḥtasib* in this case), Badr al-Dīn al-ʿAynī.[81]

[79] Al-Maqrīzī, *Kitāb al-Sulūk*, 4:343. [80] Ibid., 4:331–332.
[81] Ibid., 4:710–711. This event is discussed in Broadbridge, "Academic Rivalry and the Patronage System in Fifteenth-Century Egypt," 101–102.

The first *muḥtasib* involved in this case, al-Tāj, held the positions of both *wālī* and *muḥtasib* simultaneously, and this is the first example seen in which this was the case. In the last century of the sultanate, amirs, the most likely candidates for *wālī*, began to hold the position of *muḥtasib*, although it was unusual for an amir to hold both positions at the same time. In previous cases, the *wālī* and *muḥtasib* worked together, each bringing a separate set of skills to the problem. When the crisis escalated and al-Tāj feared the retaliation of the populace, he resigned from his position as *muḥtasib*, though he remained *wālī*. This reinforces the point that it was the *muḥtasib*—and not the *wālī*—who was considered responsible for pricing, and to whom an angry crowd would turn.

When the sultan took control, he made some significant decisions. First, he announced security in buying and selling. Fearing theft, people had begun hiring security guards to protect the wheat that they bought. Next, he announced that prices were "in God's hands," whereupon he worked out some kind of compromise—called an average—among the relevant parties. Announcing that prices are in God's hands meant that the previous pricing rules were lifted, a kind of resetting of the market. The sultan sought to reassure merchants and especially importers that the mistakes of the previous *muḥtasib*s would not be continued by him. It did not mean, however, that there would be no engagement with prices. The sultan worked out an average price of wheat, as in Case 7.2, when the millers came to an agreement with the *muḥtasib*. In the present case, the sultan hurried to appoint a new *muḥtasib*, and his choice, the historian Badr al-Dīn al-ʿAynī, was a very different person from al-Tāj or al-Ḥalāwī in terms of education and background. This may reflect a conscious choice by the sultan to put a civilian (and learned) man into the position, after the previous harmful policies. By that time, however, the problem had grown beyond what any one good *muḥtasib* could accomplish, and instability in the grain and bread markets was a persistent feature of the last decades of Mamluk rule.

Case 7.8. Price-setting in the final years of the sultanate

Three short reports, all involving the *muḥtasib* al-Zaynī Barakāt, typify the kind of price-setting that had become common in the final years of the sultanate. Firstly, in 919/1513, Barakāt announced on the sultan's behalf the prices for many goods, "even flour." The merchants protested and closed their shops for a few days, causing hardship to the people of Cairo, before opening them again and complying with the prices that were announced.[82] Secondly, in early 922/early 1516, Barakāt set prices on meat, flour, bread, cheese, and other products. Along with this, he lashed some merchants and paraded them ignominiously in Cairo, presumably for selling above the set prices.[83] Thirdly, also in 922/1516, about six months after the second report, Barakāt went out into Cairo and set prices on all goods, even on a

[82] Ibn Iyās, *Badāʾiʿ al-zuhūr*, 4:305. [83] Ibid., 5:7–8.

sweet dish (*kunāfa*), which he lowered to two *dirham*s per *raṭl* from the prevailing rate of four *dirham*s per *raṭl*.[84]

The announcement of price-setting in these years was often connected to the taxes that the sultan imposed on the sale of many goods. These taxes, which will be discussed in the next chapter, were paid by the merchants, who, as might be expected, in turn raised the prices they charged the customer in order to preserve their profit margins. Thus, the imposition of taxes resulted in higher prices, which led to complaints by customers. Sometimes the *muḥtasib* would respond by announcing that he was setting prices below the prevailing rates, with the hope that the customers would be able to buy what they needed and the sultan would still get his essential tax revenue, all at the expense of the merchants' profits. In the second report here, for example, al-Zaynī Barakāt set prices largely in response to angry soldiers, who complained bitterly about high prices and even threatened to kill him.[85]

In the first of these three reports, the historian Ibn Iyās described the price-setting as applying even to flour, as if flour were a product that normally would not be subject to set prices. This statement about flour reflects the perspective of policy decisions and not doctrinal ones. As discussed above, jurists rejected price-setting as a general rule, allowing it only in certain circumstances and then mainly for essential food items. In a time of crisis, flour, the main component of bread, would be one of the first items for which jurists might permit prices to be set, and the cases in this chapter typically involved setting prices on wheat, flour, and bread. Here, however, the frame of reference seems to have changed—the goal of price-setting was not to make basic food available in a time of crisis but rather to keep the tax revenue flowing to the sultan while making sure that consumers could still get enough of what they needed so that they did not protest. It was well known that price-setting often led to the refusal by merchants to sell at all (and they did close their shops briefly in the first report), or to sell secretly at higher prices, all of which could lead to the very condition that the efforts were intended to avoid: reduction in tax revenue and desperate consumers. If the goal was to maximize revenue, the chance of causing these side effects might have been an acceptable risk for non-essential goods, like cheese or meat (which many jurists did not consider essential foods and thus would not allow price-setting on),[86] but it was quite a serious risk for flour. Setting prices on flour when there was no crisis of rising prices meant that the *muḥtasib* was willing to take the risk of provoking a shortage, all in the cause of raising or maintaining revenue.

The second and third reports involve the same issue—price-setting on the essential food of bread and on non-essential items, such as meat, cheese, *kunāfa*, and others. While taxes may have been involved, more likely these were efforts to maintain overall market stability when the Ottomans were quickly moving towards Egypt and merchants were transferring their goods out of their shops for safekeeping, which was reported in Case 6.6. Merchants who did keep their shops

[84] Ibid., 5:81. [85] Ibid., 5:7–8.
[86] Al-Zuḥaylī, *al-Fiqh al-islāmī wa-adillatuh*, 4:2692.

open may have charged more due to the risk they perceived. The *muḥtasib*'s interests here were quite different from those at times of bread shortages, when the goal was to provide hungry people with life-sustaining bread. Here, it was the sultanate's survival as a whole that was at stake, and allowing merchants to close up shop or charge higher prices to reflect the risk they thought they were under was simply an unacceptable acknowledgement that the security of the sultanate was in grave danger.

The third report took place just a month after the Mamluk army lost Syria to the Ottomans at the battle of Marj Dābiq, near Aleppo. Sultan al-Ghawrī died in that battle, and the caliph, who accompanied him, was imprisoned by the Ottomans. The amirs in Egypt chose from among their ranks Ṭūmānbāy to take the position of sultan. He was invested in the position by the caliph's father (who was a former caliph) and he focused efforts on building up the military to face the advancing Ottomans. In a last-minute effort to clean house, he required the amirs to promise not to oppress the general population, and he also repealed the taxes that had been imposed on the merchants.[87] In the final case, as in the second, al-Zaynī Barakāt's price-setting may also have been an effort to keep merchants from raising prices or even closing shops when the Mamluk sultanate was making one final attempt to repel the Ottomans.

These three reports are typical of many others from the last century and the last decades of Mamluk rule in particular. By this time, as Jonathan Berkey concluded, the *muḥtasib*'s basic duties included collecting taxes, and "the fixing of prices seems to have been less a response to a particular shortage or crisis than a standing government policy."[88] There was no evidence of a famine or a widespread public need behind these price-setting measures. Rather, the interests at work were the sultan's need for revenue for a wide variety of reasons, which certainly included matters of defense of the sultanate generally, and the issue of prices was entangled with efforts to raise revenue from the merchants.

Conclusions

In their activities regarding food prices and availability, *muḥtasib*s had to contend with a formidable range of interested parties—the sultan, amirs, grain importers, local grain brokers and merchants, millers, bakers, and consumers—whose interests rarely aligned, putting the *muḥtasib* in the middle of very difficult situations. Further, the bread production process was complicated, and acting on one aspect of it could have unintended detrimental effects on others. In Case 7.1, the *muḥtasib*s (at the sultan's instruction) focused on the first link in the production chain of bread—the amirs whose large stocks of grain made them powerful grain merchants—on the accurate assumption that if grain could be made available at a reasonable price, the rest of the production process would work smoothly and result in sufficient and affordable bread. Attempting to focus on the price of the final product of bread, a different approach, may have seemed like a quick fix to

[87] Petry, *Twilight of Majesty*, 231.
[88] Berkey, "The *Muḥtasib*s of Cairo under the Mamluks," 266.

consumer complaints, but it usually did not work out well, as seen in Case 7.4, where lowering prices led to bakers refusing to sell and the creation of a shortage.

The *muḥtasib*s met substantial resistance in the cases in this chapter, from individuals and from larger economic forces. Amirs, whose interests often conflicted with those of the general public, were very resistant to selling grain when the price was low, and in the first case in particular, they employed many tactics to refrain from selling at the set price. Some *muḥtasib*s were sufficiently influenced by the amirs to work for their benefit. In Case 7.2, Amir al-Nashw forced the *muḥtasib* to work with the millers to increase the price of the wheat they purchased from the amirs, and in Case 7.6, the *muḥtasib* effectively acted on behalf of the amirs, forcing sales of their grain upon grain merchants or millers at an above-market cost, with the difference benefiting the amirs. Millers and bakers were generally civilians without the extra power of the amirs, but they could make their opposition to a particular policy or price known by refusing to work, a form of resistance with disastrous consequences for the bread supply.

People's access to basic food depended largely on matters beyond their control: market forces, regulatory decisions, and the nature of urban households, which allowed only the economic elite to have ovens in their homes. But they made their voices heard as they could, directing their anger at the *muḥtasib*, whom they held responsible. On several occasions, the consumers became angry enough to physically attack the *muḥtasib*, as in Case 7.3 (the *wālī* had to rescue him), Case 7.5 (people shouted at the *muḥtasib*, complained to the viceroy about him, and wanted to throw stones at him), Case 7.6 (the *muḥtasib* hid at home for three days and the *wālī* had to protect him from physical attack), and Case 7.7 (the *muḥtasib* asked to be removed from office out of fear for his life). They drew attention to hoarding amirs (although never criticized or attacked them directly, which would have been too dangerous), crowded the bakeries to make their desperation clear, and even traveled to the countryside to purchase grain themselves, subsequently finding ways to accomplish the milling and baking process. Ultimately, though, they bore the brunt of bad policy—high-ranking amirs probably did not go home hungry at the end of the day when the bakeries had no bread to sell.

Physical punishment was employed frequently in these cases, and some *muḥtasib*s were helped by the *wālī* or even amirs when it came to physical force. In the first case, the *wālī* initially whipped the hoarding amirs, and then later the *muḥtasib* called upon the amir Alakuz to lash and parade ignominiously those amirs who were not complying with the price-setting order. The parading punishment was intended to humiliate the person and send a clear signal to society that any similar infraction would also be dealt with harshly. The *muḥtasib* beat the underselling bakers himself in Case 7.3, and in Case 7.6, the sultan instructed the *muḥtasib* to beat millers and bakers so that they would increase the production of bread and instructed the *wālī* to inflict the more severe punishment of "nailing" on the grain brokers and some millers.

If there simply was no grain in the city, the *muḥtasib* was helpless, and he had to rely on the sultan to summon grain from other cities in the sultanate. If the sultan

could do this, as in Case 7.1, the crisis could be resolved. In Case 7.6, the sultan, who was away in Syria at the time, was not able to redistribute the resources of the sultanate to help Cairo and Fustat, and so their inhabitants instead went out to the countryside themselves to try to find their own wheat. In Case 7.4, importers arrived with new supplies of grain just as a bread shortage was developing, but when the *muḥtasib* intervened at that moment to lower bread prices, it had the consequence of decreasing the price of flour and grain as well; the importers did not like the price they were offered for their grain as a result, and sailed off in search of better markets.

In terms of the relevant doctrinal rules for these cases, the Sunni jurists prohibited price-setting as a general matter, with school-specific exceptions. The Mālikī school had the most expansive exceptions, which Ibn al-Ukhuwwa noted in his manual. Mālikī jurists may have permitted price-setting in some of the cases here (the first is the clearest case), whereas other jurists might have rejected them. In particular, the Mālikī school was most permissive in terms of requiring undersellers to raise their prices to the prevailing market rate, which is what the *muḥtasib* attempted to do in Case 7.3. Nearly all jurists treated importers as a special category in price-setting doctrine, exempting them entirely, a rule that *muḥtasib*s generally followed. For hoarding, the rules of the Mālikī school, again, could be used to support the actions undertaken here, because the Mālikī rules do not require the hoarder to have purchased the goods at issue, but since the amirs functioned essentially as importers, bringing grain they received as payment for their position into their urban storehouses, they might not have been subject to the rules of hoarding at all.

The context of price-setting and hoarding may help to explain the reference in the appointment document to the Mālikī school that was discussed in Chapter 2: "there will not be for you any [benefit or substance] to all that we have said—rather, most of it—unless you follow the Mālikī school in doing it." This is an area of doctrine where this statement has clear meaning, since there is a difference between the Mālikī school and the others such that the former is more likely to support the *muḥtasib*'s actions. Further, price-setting is one of the areas for which Ibn al-Ukhuwwa specifically gave the Mālikī rule in his manual, suggesting some general awareness of the juristic differences in this crucial area of the law and of the discretion that the Mālikī view gave the ruler.

While explicit articulations cannot be found, some evidence points to the notion that the sultan was concerned with how his actions would be viewed from a doctrinal perspective. This may have been tactical—the jurists were powerful, even if their physical power paled in comparison to that of the sultan, and they must have watched price-setting with great concern, not only from a professional perspective but also in terms of their own abilities to buy bread. Regardless of the particular motive in any given case, it does seem that there was awareness of doctrine in the Citadel, at least among some *muḥtasib*s, and perhaps in the population in general. Calling for sales at God's price by the *wālī* in Case 7.5 and the sultan's announcement that prices were in God's hands in Case 7.7 both suggest a familiarity with the basic rule that prices were not to be determined by humans.

Beyond these areas of price-setting and hoarding, doctrine cannot be found to support many of the *muḥtasib*'s actions. Even if merchants can be forced to sell at the price that has been set for the whole market, the forced sales seen in Cases 7.2 and 7.6 were doctrinally distinct from price-setting. These were not cases of a generally applicable set price, but rather were strategic sales of wheat imposed upon merchants at an above-market rate. The result was a bonus payment to the amirs, as if the amir had extracted that amount from the merchants as a direct tax outside of the context of any sale.

Even when clear doctrinal support existed, it took political will to put that doctrine into effect. Unless the implementing legal officials had a way to bring rules to bear on powerful amirs, those rules were not very meaningful. The jurists could not know (although they could anticipate) how the rules they articulated would be implemented, or what kinds of scenarios might arise when powerful forces were involved, such as large grain holders. Nor could doctrine alone solve large-scale problems like a bread crisis; the officials needed an understanding of how the market works and how acting on one point, such as price, would affect the larger dynamics. Applying a rule did not necessarily mean that the result would satisfy hungry people.

The policy interests of the sultan and the doctrinal interests of the jurists were both strong in the area of price and availability of food, but the side of policy proved stronger, and the *muḥtasib*, either independently or on the sultan's instructions, dealt with the needs of the day as they presented themselves in dynamic and complicated factual scenarios. To a degree, the jurists anticipated massive crises of food and famines, with some allowing price-setting, for example, in times of high prices or when necessary to serve the public interest, but it would have been difficult to formulate wide-scale policy decisions merely on the basis of what the jurists covered in *fiqh* books. Situational complexities such as powerful hoarding amirs and food distribution throughout the sultanate meant that doctrine formed one source of the overall regulatory picture, but it was amply supplemented by pragmatic decisions of the day, and sometimes doctrine had to yield altogether.

8

Currency and taxes

In the previous chapters, prices have been mentioned in denominations of copper coins, silver *dirham*s, and gold *dīnār*s, without discussing what these coins were or how they entered into circulation. This chapter now turns to the important topic of money. The issuance of currency and collection of taxes are matters in which the sultan expressed a high level of interest—perhaps the highest with the exception of public order, the topic of the next chapter. It was the ruler's prerogative to mint coins in his name, a tangible manifestation of his power, and virtually every Mamluk sultan did so.[1] Jurists paid attention to money although most of their discussions concerned gold and silver, which are subject to the complex doctrinal rules of *ribā*. They were less concerned about copper coins, which were used mainly in small transactions and were thus the most significant coin for the majority of the people.

All commercial transactions, including the sultan's collection of taxes, depended upon a stable and recognizable form of currency. Those living at subsistence level, in particular, needed to know that a coin received in wages could be used to buy bread. If a bread seller refused the coin, claiming it was fraudulent, for example, the family might not eat that day. When merchants doubted that the coins presented by their customers carried the expected exchange value, they would take actions to protect themselves, such as raising prices or inspecting each coin, both threats to market stability. In the event of a monetary crisis, the ruler needed to re-establish confidence in the system or face potentially serious consequences. Prices may have been a matter that should remain in God's hands, but no such belief existed for currency, and, indeed, fixing a currency crisis required firm sultanic action.

Just as the ruler made currency available for use in society, so, too, did he seek to collect funds to supplement the treasury. The collection of the Islamic tax imposed on Muslims, *zakāt*, was partly his responsibility, and it was also a topic for which the jurists developed extensive rules. (The collection of the *jizya* tax from non-Muslims was discussed in Chapter 5.) The sultan did not limit himself to collecting

[1] Schultz, "The Monetary History of Egypt, 642–1517," 323. According to Warren Schultz, even the pretender sultans minted coins, using informal mints if necessary. This desire by all sultans and contesters to mint coins shows their symbolic value. Discussion with Warren Schultz; see also Berman, "The Turbulent Events in Syria in 658–659 A.H./1260 A.D.," 314–317. The numismatic evidence of the Mamluk period has been collected in Balog, *The Coinage of the Mamlūk Sultans of Egypt and Syria*. The large number of coins minted as compared with the few times that a *muḥtasib* of Cairo or Fustat was linked with an event involving coins suggests that in most cases the process of putting coins into circulation (or pulling them out, if needed) after minting did not involve a *muḥtasib*.

these kinds of enumerated doctrinal taxes, however. He also determined and oversaw the collection of additional ones, which the jurists largely rejected. Further, attempts to extract money from the people were bound to be met with some resistance.

Case 8.1. Counterfeit copper coins

Toward the end of 745/end of 1344, commerce in Cairo slowed to a halt, due to difficulties with the copper coins (*fulūs*) in circulation, and the prices of most goods increased. This was because transactions in copper coins had been "by count," and so the quantity of light copper coins circulating in the market increased. Some people were buying flat copper for two silver *dirham*s per *raṭl* (a unit of weight that was equal to 450 grams or approximately one U.S. pound) and forming it into light copper coins. Then lead began to be cut into the form of coins and put into circulation. *Fulūs* from Greater Syria (al-Shām)—which were large—began to be imported and were cut to make six forged *fulūs* for attempted use in Egypt.[2] The situation with coins became very troublesome as a result.

Sultan al-Ṣāliḥ Ismāʿīl (r. 1342–5) summoned the *muḥtasib* of Cairo, Ḍiyāʾ al-Dīn, and the *wālī* and rebuked both of them. They in turn seized many merchants, lashed a number of them with whips, and paraded them ignominiously, announcing publicly their wrongful act of raising prices. The *muḥtasib* prohibited the brokers of goods from increasing prices, and not one of them dared to do so. Then it was announced that only *fulūs* from the sultan's mint would be accepted by count. *Fulūs* that were minted formally but came from outside the sultanate would be accepted only by weight, with a *raṭl* equal in value to two *dirham*s.[3] Coins fashioned out of the raw materials of copper or lead would not be accepted at all. When conducting transactions in copper coins, people separated out those from the sultan's mint and used them by count. The others were weighed and used at the value of two *dirham*s per *raṭl*. Then, everyone was ordered to bring their copper coins to the mint, and new ones were made.[4]

This case provides important insight into the economic, legal, and monetary situation and the challenges of being an average consumer or a merchant in an environment of uncertainty in values of coins. The Mamluks minted three types of coins, classified according to their component metal: gold (*dīnār*); silver (*dirham*); and copper (*fals*, pl. *fulūs*). While the terminology remained consistent, the actual shape, size, and weight of each type of coin varied over time.[5] The standard measurement of weight for gold coins was the *mithqāl* (about 4.3 grams) and for

[2] According to a discussion with Warren Schultz, there is no surviving numismatic evidence that supports or invalidates this account.

[3] Coins of foreign origin did circulate in Mamluk markets. Schultz, "Mahmûd Ibn ʿAlî and the 'New Fulûs,'" 129.

[4] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:669.

[5] Schultz, "The Monetary History of Egypt, 642–1517," 323. As Warren Schultz explained, "The *dīnār*s issued during the reign of the Umayyad Caliph ʿAbd al-Malik, for example, have little in common with the *dīnār*s of the Mamlūk Sultan Barqūq other than the type of metal used. The failure to address this fact of life has been the source of many modern misinterpretations." Ibid.

silver coins it was the *dirham* (about 3 grams).[6] A *mithqāl* of gold coins was the number of gold coins that added up to the weight measurement of one *mithqāl*. A *dirham* of silver coins indicated the number of coins that added up to the weight value of one *dirham*. (The terminology of silver can be confusing because these coins were also called *dirham*s, so the term refers both to the weight measurement and the silver coins themselves.) Since the actual weight of the *dīnār* and the *dirham* could range widely, these coins were often weighed when used in a transaction.

Copper *fulūs* are much more complicated to describe. Copper is not a precious metal, and the value of a copper coin does not relate to the value of the metal itself. In numismatic terms, such coinage is called fiduciary money, and its value is determined by recognition and use at a certain specified value rather than by the metal itself.[7] As Warren Schultz has written, to maintain this higher extrinsic value, the issuing authority must limit the number of coins it issues and then continue to recognize their value by accepting them for payment of taxes. "Failure to do so could result in the coins plummeting in value to a floor provided only by the market value of the metal itself."[8]

Unlike gold and silver, copper coins did not trade by weight, but rather traded in part by weight and in part by count. This bi-valuation system created opportunities for confusion and arbitrage. In the case here, there were two separate but related problems. First, since copper coins were trading at the beginning of the event by number, people had an incentive to spend lighter coins and save the heavier ones, perhaps hoping that their value as copper might exceed the purchasing power as a coin or perhaps anticipating that copper coins would trade by weight in the future.[9] Second, counterfeiters saw the opportunity to make coins out of copper and lead that were lighter than the average genuine coin; since the coins were trading by number, they must have hoped that if they looked like genuine coins, they would be accepted, regardless of weight.

The counterfeiters and perhaps the population more generally seem to have understood several features of the monetary system. The cost of the copper or other metal used to make the false coin must have been less than the monetary value of the coin, otherwise there would have been no incentive to counterfeit. According to al-Maqrīzī, people bought flat copper for two *dirham*s per *raṭl* and formed it into light coins. He did not state how many copper coins could be fashioned from the two *dirham*s worth of copper, and no sense of the profit the counterfeiters were making can be discerned from this information. The cost of a Syrian coin that was cut up must have been less than the value it received in Egypt, even taking into

[6] Ibid., 334; Schultz, "Mamlūk Metrology and the Numismatic Evidence," 59–62; idem, "Mahmûd Ibn ʿAlî and the ʿNew Fulûs,'" 136.

[7] Schultz, "Mamlūk Egyptian Copper Coinage before 759/1357–1358," 26.

[8] Ibid.

[9] When *fulūs* were traded by count and currency instability became a problem, it was a common pattern for the sultan to announce that *fulūs* would be traded by weight. The earliest record of this kind of announcement is from 693/1293–4, as discussed in ibid., 31–32.

account costs of transport and labor. The general population seems to have had a way to determine that a coin was light, perhaps based on its relation to other coins or on the perceived typical or even announced weight of the copper coins in circulation.

In principle, weight should not matter if copper coins are traded according to count, but this is where the bi-valuation standard of copper comes into play. When copper is exchanged for silver, the weight does matter, since copper coins were also valued in relation to the weight value of the *dirham*. For a merchant dealing in both *fulūs* and *dirham*s, the weight of the *fulūs* was significant, because the lighter the *fulūs* he received from customers, the more *fulūs* he needed to buy a *dirham*'s worth of goods in his larger transactions.[10] The weight issues trickled down to the street where Egyptians bought daily bread, since the merchants preferred not to accept lighter *fulūs* and thus lose when converting *fulūs* into *dirham*s.

In this case, merchants raised prices as a precaution in an unstable environment of light coins, and at that point the *muḥtasib* stepped into the situation. From their perspective, the merchants merely acted to protect their interests, compensating for two situations. First, it would take more genuine coins to add up to a silver *dirham*, and presumably they would deal with wholesale suppliers for larger transactions in *dirham*s, not huge quantities of *fulūs*. Secondly, they might receive a counterfeit coin, all the more offensive because it was light, and in turn someone else might not accept it. The report does not say that the merchants examined each coin carefully in an effort to avoid forgeries, which suggests that the lightness of the coins overall was a much larger problem than the fact that some coins were counterfeit.

Now that the sultan knew that forged copper coins were in circulation, and that the *fulūs* in circulation were of increasingly light weight, what did he do? He deemed unacceptable copper and lead that people had fashioned into coins and determined that coins made at the sultan's mint would be traded by number, with any remaining non-counterfeit coins traded by weight. Reference to coins from the sultan's mint seems to mean any copper coins that had been minted officially in the sultanate—from previous sultans and from any of the mints, whether in Cairo or elsewhere. Further, the sultan minted new copper coins, and numismatic evidence shows that the sultan aimed at a uniform weight of three grams with these coins.[11] It seems that once the crisis of confidence started, it could not be repaired without turning to new coins. A new issuance, aiming for greater uniformity in weight, seemed a way to wipe the slate clean. The new coin contains the sultan's name on the front, and on the back, inside the square, it states that it was struck in Cairo in 45, referring to the year 745 A.H. (see Image 8.1).[12]

[10] Ibid., 32–33.

[11] See ibid., 36, and the figure showing the range of weights of these coins on p. 43. The histogram shows a large number of coins in the range of 3 to 3.19 grams.

[12] Reprinted with permission from Balog, *The Coinage of the Mamlūk Sultans of Egypt and Syria*, 172, catalog number 285. The Arabic spelling of Cairo is missing the final *tā' marbūṭa*. Catalog number 286 is the same coin with the date of the following year, 746 A.H., so there were at least two issuances of this type of coin.

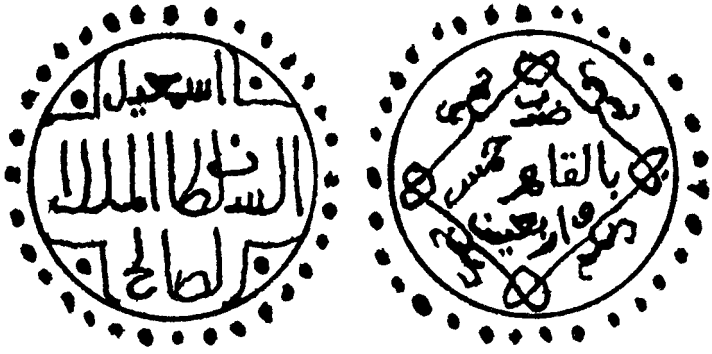


Image 8.1. Copper coin minted in 745/1344–5.

Why was trading copper coins by count so desirable, even as it led to basic problems in the coinage system? The main reason was for simplicity of transaction—each time a loaf of bread was bought, the coin did not have to be weighed. Further, customers could lose value in the weighing process, either because merchants cheated intentionally or because the weight of one coin was small and required delicate weights, which may not always have been available, to measure it. Case 6.3, involving the professional weighers, referred to the *qabbānī* of the market of the Barjawān quarter weighing not only goods but also coins, which might have been in reference to gold, silver, or copper. Accepting coins by count made transactions quicker and simpler.

The appointment decree charges the *muḥtasib* with monitoring the products of the mint: "As for the mint and the coins that come from it, there may be some impure ones among them that are not initially obvious. The *muḥtasib* should be courageous in monitoring the products of the mint."[13] Watching out for counterfeit coins was part of the *muḥtasib*'s task. Yet this *muḥtasib*, Ḍiyā' al-Dīn, worried more about prices—which hurt consumers most tangibly—than about the coins themselves. Holding prices constant merely because of uncertainty in coinage, however, was not a situation for which jurists approved price-setting.[14] This was not a case of the *muḥtasib* enforcing a *fiqh* rule, but rather a macroeconomic policy decision of the sultan—and one that the jurists might have objected to on doctrinal grounds.

The manuals do not discuss the mint but do include sections on the *muḥtasib*'s regulation of money-changers. They warn that making a living from money-changing is dangerous because an ignorant money-changer will unknowingly violate doctrinal rules.[15] In the context of money-changing, the rules of *ribā* govern exchanges of gold for gold and silver for silver, and specify that when exchanging for

[13] See the appointment document in Chapter 2.
[14] See discussion in Case 7.1.
[15] Al-Shayzarī, *Nihāyat al-rutba*, 74; Ibn al-Ukhuwwa, *Ma'ālim al-qurba*, 143; Ibn Bassām, *Nihāyat al-rutba*, 105.

the same metal, the exact weight amount of the same quality must be exchanged in an immediate transaction. Gold may be exchanged for silver in unequal weight but the transaction must be immediate.[16] If someone wanted to exchange gold coins minted outside the Mamluk sultanate for Egyptian *dīnār*s, for example, the gold should be of the same quality and the same weight and should change hands in a simultaneous transaction.[17] In addition, Ibn Bassām warned that money-changers and goldsmiths might try to cheat customers by giving less than the quantity due, or by mixing other substances into the gold or silver.[18]

Ibn al-Ukhuwwa also included similar rules, with specific reference to the *ribā* prohibitions.[19] He warned of the possibility that money-changers would put into circulation debased *dirham*s, meaning those mixed with copper, which would harm traders if they did not know the standard currency of the area. In such a case, the *muḥtasib* should order the money-changers to clip the coins and change their shape so people know what they are.[20] Thus, the provisions in the manuals indicate that the *muḥtasib*'s duties included monitoring the kinds of coins in circulation, with a focus on the consumer who might be duped by coins whose value was not readily apparent, such as traders unfamiliar with the local currency.

The jurists disagreed about whether the rules regarding *ribā* should also apply to copper coins.[21] This, too, is a complex area of doctrine, but it suffices here to conclude that concerns about treating copper like gold and silver can be found most clearly in the Mālikī school.[22] The other three schools generally held that circulating copper coins are not subject to *ribā* rules, although contrary views can also be found within each of these schools. Those jurists who did not extend *ribā* rules to copper coins typically based their conclusion on the rationale that copper coins trade by number, not by weight, and are more like goods than money.[23] If copper coins were subject to *ribā* rules, the consequences for daily purchases would not have been significant, but there would have been a problem when they were traded for each other, such as when *fulūs* for *fulūs* were exchanged here in the new minting: they would have to be exchanged by

[16] Vogel and Hayes, *Islamic Law and Finance*, 72–87; Yanagihashi, *A History of the Early Islamic Law of Property*, 212–297.

[17] Al-Shayzarī, *Nihāyat al-rutba*, 74–75. According to al-Shayzarī, it is impossible as a practical matter to do this if the gold is not pure, because the amount of gold actually traded cannot be known with certainty.

[18] Ibn Bassām, *Nihāyat al-rutba*, 105–107.

[19] Ibn al-Ukhuwwa, *Maʿālim al-qurba*, 143–147.

[20] Ibid., 70.

[21] A separate but related question is whether *zakāt* should be applied to wealth in the form of copper coins.

[22] Mālik b. Anas, *al-Mudawwana al-kubrā*, 4:1440; 2:407.

[23] Al-Qalyūbī, *Qalyūbī wa-ʿUmayra*, 2:170; al-Buhūtī, *Sharḥ Muntahā al-irādāt*, 2:193–194; al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, 7:3165. For a general overview of the legal treatment of copper coins, see Brunschvig, "Conceptions monétaires chez les juristes musulmans," 137–142; "Fulūs," al-*Mawsūʿa al-fiqhiyya*, 32:205–206; "Ṣarf," *al-Mawsūʿa al-fiqhiyya*, 26:370–372. Jurists agreed on the basic topic of the permissibility of using copper coins as a means of payment. Ibid., 26:370. Al-Maqrīzī objected not to the mere use of copper coins as payment but to what he saw as the over-reliance on *fulūs* in Egypt in his time; *fulūs* should be used for transactions of small items only, according to him. Al-Maqrīzī, *Shudhūr al-ʿuqūd*, 157; idem, *Ighāthat al-umma*, 125–126; Allouche, *Mamluk Economics*, 77.

equal weight and quality in a simultaneous transaction. It is unclear whether the new coins were distributed in that manner.

This case allows for a tentative sketch of the way people used copper coins in their daily lives. There was no central banking authority and the sultan never had complete control over the money supply.[24] The value of a copper coin depended on the ability to use it to purchase something that had the same value as the good or service that the person sold or performed in order to receive the coin. For the monetary system to work, people had to believe that a coin would retain the expected value for trading among themselves and for payment to the sultan. Stability was threatened when people thought that a coin they accepted would not have the same value when they spent it. They watched out for indicators, such as a coin that looked and felt different from the others. Some counterfeit copper coins might circulate without causing economic disturbances. Likewise, some people might hold on to the heavier of their *fulūs*; only when many started to stockpile the heavier ones did the problem become real. When the counterfeiters tried to increase their profit margin by lightening the coins, their products compounded an already bad situation that the sultan could not rectify with the existing *fulūs*.

The monetary problems in the Mamluk period were not merely between the common person and the Mamluk powers—the common people fought among themselves, too. Those trying to make or use a counterfeit coin or withholding heavier copper coins were neighbors, trying to advance their own interests at the expense of others, knowingly or not. There seems to have been no way for people to protect themselves when the value of copper coins was decreasing except to constantly watch out for coins that felt lighter than average or appeared to be fraudulent. The new issuance in this case did not solve the problem of *fulūs*, however, and the bi-valuation system of weight and count soon caused a new set of problems.

Case 8.2. New money

At the beginning of 759/early 1358, during the second reign of Sultan al-Nāṣir Ḥasan (r. 1354–61), the order was given, on the instructions of Amir Ṣarghitmish, to mint new *fulūs*. Ṣarghitmish declared that the weight of one new *fals* was to be one *mithqāl* and that the new copper coin would be worth twice the value of an old one. Specifically, twenty-four new coins were worth the value of one silver *dirham*.

[24] As Warren Schultz explains, monetary policy in the modern sense of the term did not exist in the Mamluk period. Instead, "'official' Mamluk governmental economic activities [were] essentially and primarily reactive in nature. . . .[T]he Mamluks could only react to economic developments; they could not control them in the long run—any more than they could control the wider regional trade and economic developments. . . .[W]hile Mamluk policies likely exacerbated Mamluk economic decline, the long-term underlying factors—such as the plague, shifts in regional trade patterns and goods, etc.—were not under their control." Schultz, "'It Has No Root Among Any Community That Believes in Revealed Religion, Nor Legal Foundation for Its Implementation,'" 180.

The value of the old coins was also downgraded vis-à-vis the *dirham*: each *raṭl* of old *fulūs* would be worth one and a half silver *dirham*s, whereas previously a *raṭl* had been worth two *dirham*s. The *wālī*s and *muḥtasib*s of Cairo and Fustat went out carrying the new coins, announcing that everyone should deal with them as described.[25] According to the historian al-Qalqashandī, the new coins were issued because people were abusing transactions with *fulūs*, to the point that they would cut each *fals* into four parts and trade them as four coins.[26]

This event marked an important change in the standard of copper coins. These new coins had a different appearance and a heavier fixed weight than previous ones.[27] As Warren Schultz describes the coins, the "obverse contains a four-line central inscription giving the sultan's name and genealogy. . . .The reverse contains the mint name (at first Cairo, later also Alexandria [became a site for their minting]) and date in the central field inscription. This is enveloped by an eight-pointed star in a circular lobe, which is itself surrounded by a ring of dots. Inward pointing flowerets are located in the segments between the circle and the star."[28] The coin, shown as Image 8.2, states that it was struck in Cairo in year 759 A.H.[29]

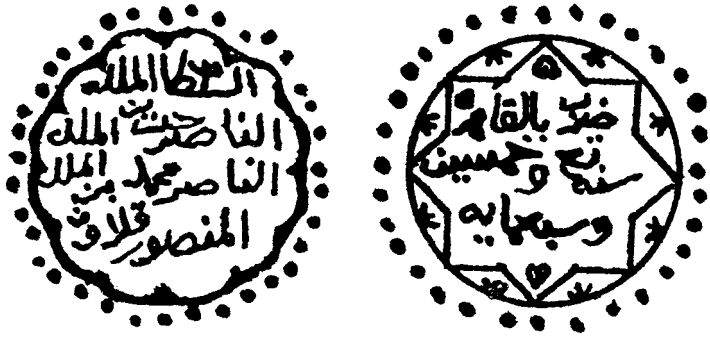


Image 8.2. Copper coin minted in 759/1357–8.

Why were the new coins necessary? As seen in Case 8.1, the sultan minted coins in 745/1344–5 with the intent that they would be of a uniform weight and trade by count. Copper coins were issued several times between then and this case fourteen years later.[30] Yet the sultan could not maintain control over how the coins circulated, and, as al-Qalqashandī reported, people were again trying to take advantage of the opportunities created by coins trading by count. This time,

[25] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:39.
[26] Al-Qalqashandī, *Ma'āthir al-ināfa*, 2:159.
[27] Schultz, "Mamluk Egyptian Copper Coinage before 759/1357–1358," 25.
[28] Schultz, "Mahmûd Ibn 'Alî and the 'New Fulûs,'" 137.
[29] Reprinted with permission from Balog, *The Coinage of the Mamlūk Sultans of Egypt and Syria*, 199, catalog number 369.
[30] Ibid., 172–199.

the sultan issued new *fulūs* and made a decision about the relationship of values between the old and new, stating that the value, or purchasing power, of the new coins would be twice that of an old coin.

The sultan also determined that the value of a *raṭl* of old coins would be equal to a *dirham* and a half instead of two *dirham*s. This is essentially a devaluation—everyone with old *fulūs* would now get less for a *raṭl*'s weight of coins. This decision affected those whose businesses involved both *fulūs* and *dirham*s and also reached the average person buying bread with single coins; to compensate for the devaluation, a merchant would have to raise prices. The sultan could set the valuation of coins at the time of issuance or any time thereafter, the event shows, creating the lingering possibility of a loss in the value of copper coins a person may have been saving and suggesting that savings in copper coins were at risk. Numismatic data show that the *mithqāl* as the weight standard was maintained for Mamluk copper coins for the next thirty-five years. Setting this standard, however, did not mean that the problems of light coins creating instability disappeared, for the underlying tension between weight and count as methods of measure persisted.

The *muḥtasib* of Cairo in this event was the little-known Quṭb al-Dīn b. ʿArab. He served just over a year, from Shaʿban 758/1357 to Ramadan 759/1358, losing his position in a struggle among amirs; those who had been associated with Amir Ṣarghitmish, including Quṭb al-Dīn, were pushed out of the administration.[31] The lack of biographical information and the circumstances of his dismissal suggest that he was appointed for his loyalty more than for his administrative experience or advanced knowledge of law. The identity of the *muḥtasib* of Fustat cannot be determined with certainty, because chronicle accounts of the appointments in Fustat are incomplete. Shams al-Dīn was appointed in Fustat in 752/1351 and dismissed at an unspecified date; his successor Bahāʾ al-Dīn was dismissed in 766/1364—one of them was the *muḥtasib* at the time of this event. Shams al-Dīn initially served as assistant *muḥtasib*, and then was appointed *muḥtasib* of Fustat. He was one of the few *muḥtasib*s in this period for whom the biographers recorded that he had been an assistant *muḥtasib* first.[32] As for Bahāʾ al-Dīn, the date of his appointment as *muḥtasib* of Fustat is unknown. After his dismissal in 766/1364, he served as *muḥtasib* in Cairo (775–6/1373–4).[33]

The task of the *muḥtasib*s in this case was to go out into the markets with the new coins, accompanied by the *wālī*s, and announce that the new coins should trade as stipulated. This was a task guided by sultanic policy, not by doctrine, and what was expected of the *muḥtasib* was fairly minimal. The few jurists who extended *ribā* rules to copper coins would have required that if old coins were exchanged for new, it be done by equal weight. But even if they found reason to object, they were fighting a battle that had long been lost. And while the appointment document instructs the *muḥtasib* to watch out for forgeries, decisions about minting new coins

[31] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:35, 42.
[32] Ibid., 2:838; Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:145.
[33] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:96, 113, 220.

and their use were made by the sultan (or possibly high-ranking amirs acting on his behalf); the *muḥtasib*'s task was to support the sultan's chosen policy.

Case 8.3. Coins, complaints, and taxes

The report begins with the announcement by the *muḥtasib* of Cairo, al-Zaynī Barakāt, that all *fulūs* should be traded by weight.[34] The people suffered, and there was instability in the currency market. Rumors arose that al-Zaynī Barakāt had been removed from office. A few months later, in 919/1513, Sultan al-Ghawrī (r. 1501–16) reconfirmed al-Zaynī Barakāt as *muḥtasib* of Cairo and reaffirmed the *muḥtasib*'s announcement that *fulūs* are valued by weight. As a result of these currency regulations, "the people lost the value of all of their money that had a drawing on it."[35]

When the sultan saw the opposition to his measure, "it was remarkable" that he "felt compassion for the people," and he canceled the payments that were due to the *muḥtasib* (*mushāhara*, pl. *mushāharāt*) and many of the taxes (sing. *maks*) that had been levied on wheat, melons, and other goods. Yet even with the lifting of these payments and taxes, the people still complained about the *fulūs*. The sultan said, "I lifted many taxes from them, for which I lost about 2,000 *dīnār*s per month, and still they are complaining about the *fulūs*!" Angrily, the sultan ordered the re-imposition of these taxes and even added to them.[36]

The announcements by al-Zaynī Barakāt and the sultan follow the pattern already seen in Cases 8.1 and 8.2—when the copper coins in circulation begin to trade by weight instead of by count, people lose the expected buying power of their coins that are lighter than average. Here, the coins involved are described as having a drawing on them. Compared to the earlier Mamluk period, there were not many copper coins issued in the final decades of Mamluk rule. In 917/1511–12 and 918/1512–13, Sultan al-Ghawrī issued *fulūs* that contained only text: his name, Cairo, and the date.[37] Numismatic evidence shows that he issued other sets of copper coins without dates, including coins with a medallion in the shape of a mosque lamp, a complicated arabesque star, a linear prayer niche with a mosque lamp, and a waterwheel.[38] Possibly one of these issuances was the coin with a drawing mentioned in the report. Coins may have contained such images to assist the illiterate with identifying them, since representations of objects on coins were more easily distinguishable than text.

In the first announcement, it seems that al-Zaynī Barakāt decided that all of the *fulūs* would be valued by weight. This is the first time a case involved the *muḥtasib* making this kind of determination; usually coin valuation was a major policy matter, announced from the highest level. If any *muḥtasib* had the power to make such a

[34] Ibn Iyās, *Badā'i' al-zuhūr*, 4:295. [35] Ibid., 4:327. [36] Ibid., 4:328.
[37] Balog, *The Coinage of the Mamlūk Sultans of Egypt and Syria*, 378. These are coins 894 and 895.
[38] Ibid., 378–382. Throughout the Mamluk period, coins were issued that contained graphical representations. See generally ibid. For a discussion of the copper coins issued in the final decades of the Mamluk sultanate, see Meloy, "Copper Money in Late Mamluk Cairo."

decision, though, it would be this one. Al-Zaynī Barakāt was a civilian *muḥtasib* who was appointed in 910/1505 and served in the position with few interruptions for the remainder of the Mamluk period and even after the Ottoman conquest in 923/1517. As discussed in Chapter 2, he was one of the most powerful men in Egypt in these final years of the sultanate. When growing complaints about his order led to rumors that he would be dismissed, the sultan stepped in and not only reaffirmed his position but also repeated the very announcement that had started the unrest in the first place. The sultan did not, however, try to start over by issuing new copper coins that would be traded by number, as was done in the previous cases.

What were the taxes that the people were paying and that the sultan initially abrogated? As has been seen, over time the position of *muḥtasib* became one for which the would-be official would pledge an amount of money to the sultan in order to be appointed. This meant that the *muḥtasib* had to collect money from merchants in the course of his work, from which he paid the sultan what he had pledged while also keeping an amount that constituted his salary.[39] Shifting responsibility for the *muḥtasib*'s salary to the merchants (and their customers) led to a more official system towards the end of the Mamluk period whereby merchants made a regular payment—called, as here, *mushāhara*, a "monthly" wage or payment—to the *muḥtasib*.

The sultan also imposed a tax on goods, referred to as *maks*. This term has been used to describe many types of taxes, including, as in this report, various payments the merchants had to make. It initially referred to a tax in the pre-Islamic markets, and then after the arrival of Islam was used for the ten per cent excise tax (*ʿushr*) that was often demanded of merchants. Customs taxes levied on goods imported into a region were also called *maks*, and as a result, customs houses, including the one in Cairo, were called by this name.[40] Jurists typically did not discuss directly the topic of *maks* (beyond the *ʿushr* tax); some did suggest the impermissibility of *maks* taxes by citing the *ḥadīth* stating that the *maks* collector would not enter heaven.[41] A jurist who deemed all non-doctrinally based taxes impermissible basically denied the ruler the ability to collect any new kinds of taxes.

As a practical matter, however, raising money from the population was a perennial concern of the sultans, and throughout the final decades of the Mamluk sultanate, the *maks* taxes became a serious and recurrent issue.[42] Typically, the sultan imposed the taxes, then lifted them, then re-imposed them.[43] The details of

[39] See the discussion in Chapter 2 about the first *muḥtasib*s of the Mamluk period to be appointed upon the promise to pay.

[40] "Maks," in Ibn Manẓūr, *Lisān al-ʿarab*, 13:160–161; "Mukūs," *al-Mawsūʿa al-fiqhiyya*, 38:377–378.

[41] Abū Dāwūd, *Sunan Abī Dāwūd*, 4:562 (*ḥadīth* 2937); Ibn ʿAbidīn, *Radd al-muḥtār*, 3:223.

[42] Jonathan Berkey refers to the fifteenth century generally as a time of a "shrinking tax-base with no proportionate decline in expenditures," making revenue collection "an even more arbitrary practice." Berkey, "The *Muḥtasib*s of Cairo under the Mamluks," 270.

[43] See, for example, Ibn Iyās, *Badāʾiʿ al-zuhūr*, 4:24–25, which also explains that some of these taxes were used to support the amirs in place of the *iqṭāʿ* grants to them of the products of specific tracts of land, which had been their main system of support and which led to many problems in the grain markets, as seen in Chapter 7. Other announcements of the abrogation of taxes occur in ibid., 4:77, 304–305; 5:6–8, 79, 81. Amirs and soldiers did not necessarily benefit from these taxes, however, because the taxes caused higher prices even for the soldiers who had to buy goods in the market. In

the taxes—how much tax and on what products—might change with each pronouncement, but the basic idea of taxing the sale of products, with the result that the cost was passed on to the customer, remained the same.

Case 8.4. The rising cost of water

At the beginning of 748/1347, a group of people went to the sultan and complained about the recession of the Nile waters from the banks of Cairo and Fustat. As a result of the shifting of the Nile banks away from the cities, the cost of transporting water rose dramatically. The sultan ordered the engineers to investigate, and they decided to construct an embankment to facilitate water collection. An assessment (*taqdīr*) of 120,000 *dirham*s was imposed upon those who owned property along this portion of the Nile. The amount was to be collected proportionally, with each cubit (*dhirāʿ*, approx. half a meter) of coast costing fifteen *dirham*s. The affected property extended for 7,600 cubits, and the *muḥtasib* of Cairo, Ḍiyāʾ al-Dīn, undertook the calculation and collection of this assessment from these landowners.[44]

As discussed in Chapter 1, the Nile bed dramatically migrated westward in the Ayyubid and early Mamluk periods. This had the beneficial effect of opening new land for expansion but distanced existing land, particularly in Cairo, from the river.[45] Water was brought from the Nile to the city in part by water carriers, typically using water skins, and the farther they had to travel, the more they must have charged for the water and the less they could carry in a day's work. An extension to the banks suggests some kind of pier running parallel to the water or perhaps extending into the water, since it seems that the river's recession left a wet and boggy area that could not be traversed easily by those carrying the water.

The term used here for the money paid by these residents was an assessment, some kind of special collection that was not called "*maks*." In the manuals, collecting taxes (except the *jizya* from non-Muslims) is not one of the duties of the *muḥtasib*. Instead, this task would have fallen within the jurisdiction of an official from the sultan's administration. Since this was an unusual, one-time tax, it seems that it was not easily assignable to one of these officials, and so

922/1516, for example, a group of soldiers complained bitterly to the sultan about the taxes imposed on goods and the high prices that resulted. They asked the sultan to fire al-Zaynī Barakāt, and when he did not, they asked the sultan to hand Barakāt over to them so that they could kill him. The sultan did not do this either, and instead had Barakāt call out in the markets that all the taxes that had been announced previously were still in place. Barakāt then went out into the marketplace and announced prices for meat, flour, bread, cheese, and other goods, out of fear, it seems, of the threats of the soldiers. Ibid., 5:7–9. The taxes were still in place, but he apparently tried to lower the prices of goods upon which the taxes would then be imposed.

[44] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:724; Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 10:155.

[45] Abu-Lughod, *Cairo*, 28–29. The map on p. 28 shows the shifting course of the Nile. Abu-Lughod notes that it was a fortunate coincidence that the Nile's shift westward provided new territory as the Cairo-based empire grew and needed more land. This was, however, not all positive, as this case shows, because it meant that water had farther to travel to reach the city center.

the sultan chose the efficient Ḍiyāʾ al-Dīn.[46] Collecting money was a delicate matter, and if done improperly could lead to resistance. The sultan's goal was probably peaceful contribution by the people, which he seemed to achieve through his appointee the *muḥtasib*, even though only those along the Nile were asked to pay for benefits that ultimately extended to anyone buying from a water carrier. If the people from whom the assessment was collected tried to resist payment, their voices were not recorded.

As seen in the previous case, most jurists rejected any non-doctrinal tax. In the case at hand, the assessment was more along the lines of a payment for a particular localized service, very different from a generally applicable tax, and, indeed, seems like the ideal use of the ruler's *siyāsa* authority to act in areas where doctrine is silent. The Shāfiʿī jurist al-Māwardī, whose analysis of the position of the *muḥtasib* was seen in Chapter 2, specified that the *muḥtasib*'s job is to meet people's needs, and he gave examples that were prescient of this case: having access to drinking water and having fences maintained in a community. According to al-Māwardī, the treasury should pay for these services, and if not able, the people should pay collectively.[47] While it is not clear whether the sultan in this case considered paying from the treasury, the collection process seemed to work smoothly. The next case, however, involves a collection that the jurists thought veered into their doctrinal territory, and at least one protested.

Case 8.5. Collecting "*zakāt*"

In 789/1387, Sultan Barqūq decided to raise funds to defend against expansionist moves by Tamerlane. He ordered Jamāl al-Dīn al-ʿAjamī, the *muḥtasib* of Cairo, to summon the merchants and those with monetary means and to collect *zakāt* payments on their property (*amwāl*). The sultan also ordered the Ḥanafī chief judge Shams al-Dīn Muḥammad al-Ṭarābulsī to make the merchants take an oath on what they claimed they owned for purposes of this *zakāt* payment. The *muḥtasib* and the judge hurried to accomplish their tasks, but then the orders were withdrawn and the money was returned, because the news arrived that the threat from Tamerlane had receded.[48]

The historian Ibn al-Furāt reported a slightly more complicated version of this *zakāt* episode. After the *muḥtasib* and the chief Ḥanafī judge had been ordered to

[46] This event occurred towards the end of his six-year term. Earlier in his tenure as *muḥtasib*, he briefly served as comptroller of the financial bureaus (*nāẓir al-dawla*), suggesting that the sultan trusted him with significant financial matters. Al-Maqrīzī, *Kitāb al-Sulūk*, 2:664–665.

[47] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 305–306.

[48] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:564–565; Ibn al-Ṣayrafī, *Nuzhat al-nufūs*, 1:156; Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:337; Ibn al-Furāt, *Tārīkh*, 9:12–13. The specific threat was to Qara Muḥammad of the Qara Qoyunlu in the region of Azerbaijan, who had secured a promise of protection from Barqūq. When Barqūq received the news that Qara Muḥammad was threatened by Tamerlane, he sent an army to Aleppo that was to continue on to Qara Muḥammad's territory, and this was the expedition for which funds were raised in this case. Before the Mamluk soldiers could depart from Aleppo, they received the news that Qara Muḥammad had defeated Tamerlane. Broadbridge, *Kingship and Ideology in the Islamic and Mongol Worlds*, 173.

undertake this collection, the four chief judges and the *muḥtasib* gathered at the Ṣāliḥiyya *madrasa* to discuss the sultan's order. Jamāl al-Dīn, the *muḥtasib*, had previously been appointed one of the four assistants to the Ḥanafī chief judge, and he may still have been an assistant at the time of this event.[49] In this version of the episode, all four chief judges were expected to play some role in the assessment and collection of the tax. Before the sultan revoked the orders, he had sought to appoint a new chief Shāfiʿī judge. He summoned Shaykh Nāṣir al-Dīn Muḥammad, known as Ibn al-Mīlaq, to the Citadel and asked him if he would accept the position. He refused at first, and then agreed, but with several conditions, including the abrogation of the order to collect *zakāt* tax and the return of what had been collected.[50] The sultan accepted the conditions, and appointed him chief Shāfiʿī judge. Soon thereafter, the merchants and others whose money had been taken were called back to the *madrasa* to receive a refund.[51]

The tax payments that the sultan demanded were called *zakāt*, but that label requires investigation. *Zakāt* is the obligatory payment by Muslims of a specified portion of certain kinds of property, to be used for the poor and other classes of needy people as defined in the Quran. The duty to pay *zakāt* is considered one of the five "pillars" of Islam, and the jurists developed a complex system for determining what property the tax is imposed upon and which people should be the beneficiaries of the tax. According to Q 9:60, the *zakāt* should be used to benefit eight classes of individuals: (1) the poor; (2) the indigent; (3) the officials who collect and administer *zakāt* funds; (4) "those whose hearts are won over"; (5) slaves; (6) debtors who lack the means to satisfy their debts; (7) "those in the path of God"; and (8) travelers.[52]

Did defense against Tamerlane fit any of these categories? Tamerlane was a Sunni Muslim,[53] and he "used Islam to justify both his rule and his military campaigns, which he did by asserting a desire to restore and safeguard religious order as well as Chingizid order."[54] Along with the assertion of his role as defender of Islam and his reverence for the lineage of Chingiz Khan, he held "contempt for the institution of slavery. This led him to believe that the Mamluks were unworthy of rule because of their lowly origins . . ."[55] An ideological battle developed between Tamerlane and the Mamluk sultan Barqūq and his son al-Nāṣir Faraj after him, although it was

[49] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:400; Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:218.

[50] He also stipulated that no amir should oppose his orders and that there should be no interference in the cases before him. Ibn al-Furāt, *Tārīkh*, 9:14–15. While there are variations in the sources, this seems the most likely spelling of the judge's name.

[51] Ibid.

[52] Ibn Rushd, *Bidāyat al-mujtahid*, 1:506; *EI*^{2}, s.v. "Zakāt" (A. Zysow).

[53] *EI*^{2}, s.v. "Timūr Lang" (B. Manz).

[54] Broadbridge, *Kingship and Ideology in the Islamic and Mongol Worlds*, 170. Chingizid refers to the reign and lineage of Chingiz (Genghis) Khan; Tamerlane was a non-Chingiz, and "fell hopelessly outside the lineage of the golden family, which he admired to the point of obsession." Yet he also "used Islamic norms to counteract the challenges posed by genuine Chingizids, as had the Mamluks . . ." Ibid., 168–170.

[55] Ibid., 170.

not until the latter's first reign that Tamerlane was able to actually occupy Syria. Barqūq used Tamerlane's threat to the region to renew his own image as defender of Islam by "presenting the warlord as an infidel enemy . . ."[56]

Given this characterization of Tamerlane, the sultan might have claimed that the funds would be used to support "those in the path of God," which was generally understood to refer to volunteers engaged in military jihad. *Zakāt* payments made to individuals of this category were supposed to allow them to meet their living expenses and other costs related to the expeditions, such as the purchase of animals and weapons.[57] Mamluk soldiers whom the sultan may have wanted to provision in anticipation of Tamerlane's invasion were not volunteers, however, although Barqūq's characterization of Tamerlane as an "infidel enemy" would have facilitated calling these efforts a military jihad.

The jurists' elaboration of the *zakāt* rules requires that the funds collected be distributed to all categories of recipients, not just one. The Shāfiʿīs were the strictest in this regard; when the ruler is the one distributing the benefits, the eight classes should be given equal shares, and each person entitled as a member of one of the classes should be given all he or she needs, as funds allow. The Ḥanafīs and Mālikīs were more lenient in the distribution requirements: the ruler only had to give to one recipient from each class, which would allow the sultan here to direct most of the funds to class seven and give minimally to individuals from the other classes.[58] Some later Shāfiʿīs adopted this Ḥanafī rule. Perhaps this is why the sultan called the Ḥanafī chief judge to assist with the collection, and yet the sultan did not seem to intend to distribute what he collected beyond the military, which even the more lenient view would not accept.

Ibn al-Furāt's version of the episode suggests that the Shāfiʿī judicial nominee objected to the failure of the tax to meet the doctrinal requirements of *zakāt*, and he demanded that the order to collect it be rescinded and that all sums collected be returned. This is a valuable glimpse at how the jurists defended against perceived violations of doctrine by rulers and may even have succeeded in changing the ruler's behavior.[59] A tension often characterized the relationship between the jurists and the rulers, even as specific manifestations of it were not often discussed in the chronicles.[60] In this case, the judge was vocal and successful, although it surely helped his cause that Tamerlane backed away from confrontation and the Mamluk expedition was not needed.

[56] Ibid.
[57] *EI*^{2}, s.v. "Zakāt" (A. Zysow).
[58] Ibn Rushd, *Bidāyat al-mujtahid*, 1:506–507.
[59] This example exemplifies the concept of "balance of powers" between the jurists and rulers as explained by Noah Feldman in *The Fall and Rise of the Islamic State*. The jurists "built themselves into a powerful and effective check on the ruler. To see the Islamic constitution as containing the balance of powers so necessary for a functioning, sustainable legal state is to emphasize not why it failed . . . but why it succeeded so spectacularly for as long as it did." Ibid., 6–7.
[60] See the discussion in Chapter 1 of the relationship between jurists and rulers.

The manuals do not assign a role to the *muḥtasib* in *zakāt* collection, although al-Māwardī placed the official on the margins of the *zakāt* collection process. He stated that if a person tried to resist paying tax on property that is "apparent" (*al-amwāl al-ẓāhira*), in the sense of publicly ascertainable and identifiable, the tax collector should take it forcefully and the *muḥtasib* should punish him for evading the tax. Thus, the *muḥtasib* does not participate in the collection but punishes for the wrongful public act of refusal to pay an obligation that is itself publicly known.[61] Al-Māwardī's envisioned role for the *muḥtasib* was very different from the *muḥtasib* being involved in the actual collection, which al-Māwardī did not contemplate. In this case, the *muḥtasib*'s role was to call the merchants and to collect the payment, and the possibility that he held the position of assistant to the chief Ḥanafī judge might also explain his participation. The chief Ḥanafī judge was there to take oaths (which were not usually required in the process of *zakāt* payment) and perhaps to legitimize the entire event.

The term *zakāt* was no doubt used to invoke positive religious associations and to suggest that the payment was compulsory, even as the collection fell short of the doctrinal rules for several reasons.[62] Commercial merchandise, which seems to have been the property upon which *zakāt* was collected in this case, was typically considered by the jurists to be "unapparent" (*bāṭin*) property, and most jurists gave owners the choice of paying their *zakāt* on this kind of property to the official collector or distributing it directly to the recipients of the *zakāt* (and in neither case was an oath about that property required). Further, *zakāt* was an annual obligation, payable regardless of the particular circumstances of the day.[63] If some financial aspect of the sultanate happened to improve, it does not mean that the tax was refunded, but rather it should be distributed amongst those who are in need. Returning it was tantamount to admission that it was not properly a *zakāt* collection from the outset.

The merchants may have known from the beginning that this was an assessment for war provisioning rather than a *zakāt* collection, but they appeared when summoned to pay nonetheless. They did not challenge the label, but were the beneficiaries of the willingness of the candidate for chief Shāfiʿī judge to confront the sultan or of Tamerlane's timely defeat and retreat (depending on the historical account). Not all jurists were as vocal as this one, nor were all merchants as compliant as these seem to have been. Later in the Mamluk period, merchants themselves resisted these kinds of collections, as seen in the final case.

[61] Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 309.

[62] This attempt at labeling a tax as *zakāt* was done on many occasions in the Mamluk period, sometimes successfully. A tax on salt, for example, was referred to by the tax collectors as *zakāt*, while a later tax on salt was called, more correctly, *maks*. Rabie, *The Financial System of Egypt*, 86.

[63] *EI*^{2}, s.v. "Zakāt" (A. Zysow).

Case 8.6. A tax to fight the Ottomans

In 892/1487, Sultan Qāytbāy (r. 1468–96) ordered Kasbāy, the *muḥtasib*, to gather together the elders from among the merchants in the market. The sultan then asked them to provide money for an expedition, requesting a total of 40,000 *dīnār*s from the group. They protested, saying that they did not have such an amount of money. After discussions, they agreed to a compromise amount.[64] While not specified in the account, the military expedition must have been in reference to the land battles with the Ottomans that lasted from 1485 to 1491.[65]

Kasbāy, who served as *muḥtasib* from 891/1486 to 901/1495, was a military man, without any reported education beyond that provided to all new soldiers.[66] He tended to handle problems with a show of force. Shortly prior to this episode, historians reported that poor people were dying of hunger in the streets. In response, the sultan opened some storehouses and sold wheat for five *dīnār*s per *irdabb*. Kasbāy then went out and whipped merchants for failing to make bread available in the shops.[67] Kasbāy dealt with other problems relating to prices and food availability during his term in similar ways.[68]

Unlike the previous case, there was no pretense here that this was a *zakāt* collection—the sultan made it very clear that the money collected was to be used for military purposes. The merchants may have felt threatened by Kasbāy, whose task was merely to gather them, or they may have feared the sultan. But if so, they did not simply hand over the money requested, and indeed may not have had that amount to give. They negotiated with the sultan to reach a lower figure, and apparently did so on the pragmatic grounds of what they could afford, rather than protesting that this was essentially a non-doctrinal tax.

Conclusions

Taxes and currency are topics heavily dominated by sultanic policy. The doctrinal rules implicated by these cases—price-setting, *ribā*, *zakāt*, and other taxes—appear only marginally relevant. The first case did not involve the typical kind of price-setting that the jurists wrote about, where, as seen in the previous chapter, the

[64] Ibn Iyās, *Badā'iʿ al-zuhūr*, 3:242.
[65] Winter, "The Ottoman Occupation," 492–493.
[66] Ibn Iyās, *Badā'iʿ al-zuhūr*, 3:234, 317. After his dismissal from the position of *muḥtasib*, his military career progressed, and upon his death in 902/1497 he held the highest rank (*amīr mi'a wa-muqaddam alf*). Ibid., 3:354–355.
[67] Ibid., 3:238.
[68] In 894/1489, people complained to the sultan that Kasbāy had negligently allowed prices to rise and that he was neglecting the interests (*maṣāliḥ*) of Muslims. The sultan was angered and he whipped Kasbāy with about twenty lashings. When Kasbāy descended from the Citadel, he turned his anger on the market and the merchants of wheat in particular. Ibid., 3:263.

muḥtasib announced a price on a particular good, such as bread, and ordered the merchants to adhere to that price. Instead, here the *muḥtasib*s instructed the merchants not to raise prices on anything during the crisis of the coins—a temporary blanket rule against price increases rather than setting amounts. The *ribā* rules, too, were only faintly relevant; insofar as a jurist might have applied them to copper coins, the process of exchanging old for new would have been made very difficult. Finally, the collection labeled *zakāt* failed in several ways to meet the criteria of an actual *zakāt* collection, and the use of that term was clearly a strategic device by the sultan.

The manuals had little to tell the *muḥtasib* about the topics of this chapter. They did instruct him to regulate money-changers, but even there, the issue was mainly exchanging gold for gold, silver for silver, or gold for silver, and not macro monetary policy. Ibn al-Ukhuwwa also told the *muḥtasib* to be sure that silver *dirham*s mixed with copper were clipped in a way to warn consumers that the coins were not pure silver. Likewise, of all the topics of this chapter, the appointment document only mentioned the *muḥtasib*'s role in watching out for forgeries, which was not even what the *muḥtasib* did in these cases. Significantly, the *muḥtasib*s in this chapter never acted on their own accord, with the partial exception of al-Zaynī Barakāt in Case 8.3; they always took instruction from or acted subordinate to the sultan or, in Case 8.2, an amir acting on behalf of the sultan. This indicates that in matters of wide-scale monetary or financial policy, the *muḥtasib* typically did not have the power to make decisions on his own.

The cases do not offer many examples of resistance to the *muḥtasib*s' actions. There was little people could do about new currency issuances, even when they caused the coins they already possessed to lose value. Coins and bread, two essentials of life, make for a useful comparison of resistance: the average person was dependent upon a limited number of bakers (who, in turn, depended on suppliers) for daily bread. The coins needed to buy the bread were produced by the sultan and made available through official distribution channels (with the exception of forgeries and those that came from outside the sultanate). How the people spent the coins in their possession had a direct effect on monetary policy, but there was no immediate correlation between their behavior and improvement of their own lives (except possibly holding back heavier coins, which could have put one in a better position when coins were traded by weight). To the contrary, currency instability caused the average person to suffer for a period before the sultan could, possibly, stabilize or improve the situation. When the people protested about bread shortages, however, there was some chance that they might not go home empty-handed except when there was not a grain of wheat to be found in the city.

Resisting tax collection did succeed to some extent. In the case of the *zakāt* collection, the merchants were deferential, and the challenge, according to at least one report, came not from those actually paying but from the chief Shāfiʿī judge appointee, who demanded that the sultan return the money. Unfortunately, the record does not explain why he objected to the collection, but it is fair to surmise that it had something to do with the strategic and incorrect label of *zakāt*.

In Case 8.6, the merchants were rounded up by a soldier-*muḥtasib* but they did not (or could not) simply pay. They bargained in the face of the sultan's demands, countering that they did not have the amount asked, and reached a compromise. Even the sultan could face a show of resistance, and he may have understood well that extracting money from the merchants had to be done carefully, lest it lead to widespread closing of the markets and general unrest.

9

Keeping the peace

In this final chapter, the cases concern the topic of public order, where the ruler's actual influence was the greatest. In practice, both the sultan and the jurists concerned themselves with all points on the spectrum, as we have seen so far, albeit with differing degrees and perspectives. While the jurists took an interest in broad societal matters such as public order (and this may have been the overarching goal for some), it was not their expressed starting point when addressing a question brought to their attention. Rather, their methodology centered on a textual approach that had come to be accepted within Sunni Islam, although contextual factors, including public welfare, surely influenced them in the way they characterized new facts, determined what rules were appropriate to use in analogical reasoning, and reached conclusions.

The topic of public order implicated security on a broad scale, and the sultan's concerns with matters fundamental to the survival of the sultanate overshadowed those that the jurists may have had in these areas, both as a practical matter and in terms of what the jurists had to offer in their books of *fiqh*. A *muḥtasib* who turned to legal doctrine when all the merchants closed their shops or when people flocked to a wall that appeared to have a human voice, to take two cases from this chapter, would find little in the way of readily available guidance. Likewise, the *muḥtasib* manuals, organized largely around products and professions, did not envision the *muḥtasib*'s regulation of large-scale matters of public order. Not surprisingly, then, the cases here involve the *muḥtasib* acting clearly under the banner of the sultan's authority and even with his explicit instructions.

Case 9.1. The mysterious talking wall

In Rajab of the year 781/October 1379, a man named al-Shihāb Aḥmad b. al-Fīshī, who was known to be a Ḥanafī, entered his home near the al-Azhar mosque. He heard a sound from the wall of his house saying to him, "Fear God and live together with your wife properly!" He thought that he had heard a *jinnī*, an invisible being, because he did not see a human who was speaking. Later, Ibn al-Fīshī brought some of his friends to his house and they, too, heard the voice. Also thinking it came from a *jinnī*, they spread this news, and people came from all parts of Cairo and Fustat to hear the wall talking. People were on the verge of civil unrest (*fitna*) because of the voice, and so the *muḥtasib* of Cairo, Jamāl al-Dīn al-ʿAjamī, came to investigate the

situation. He spoke to the wall, and the voice replied, whereupon Jamāl al-Dīn ordered its destruction.[1]

The voice continued to be heard. The *muḥtasib* returned with assistants and sat in front of what remained of the wall, reading from the Quran.[2] Then the *muḥtasib* told Ibn al-Fīshī to tell the voice that "the judge Jamāl al-Dīn greets you." Ibn al-Fīshī did as requested, and the wall greeted him in return. The conversation continued, with al-ʿAjamī conveying his words through Ibn al-Fīshī, presumably to avoid the indignity of talking to a wall. "How long will this depravity last?" "As long as God wants." "What you are doing is causing unrest among the people and this is not good." The voice then said: "There will be no speech after this," and the wall fell silent. The tone of the wall had been rough, as if it was not human. After it stopped speaking, people still called out to it, addressing it as "shaykh."

The wall was practically made into a place of worship, visited by amirs and notables, who brought food and other kinds of gifts. The voice began again, and unrest among the people intensified. By now, Jamāl al-Dīn believed the talking wall was a ruse, and under questioning by him, Ibn al-Fīshī confessed that the voice was indeed a trick. He was arrested by the *muḥtasib*, together with his wife, and the shaykh Rukn al-Dīn ʿUmar, who had been staying with the couple. The *muḥtasib* continued questioning the woman until she informed him that she had been the one talking. She explained that her husband, Ibn al-Fīshī, had been treating her poorly and she wanted him to think that the *jinn* were telling him to resume proper conjugal relations with her. The trick worked and she later told her husband what she had done. He proposed that she continue to make the wall appear to talk, with the help of the shaykh, so that they might gain by it fame and fortune.[3]

Jamāl al-Dīn took the three perpetrators to Amir Barqūq at the Citadel and reported his findings. Barqūq was not yet sultan at that time, but he was the commander of the army (*amīr kabīr*), under two young sultans in a row, and was consolidating power and preparing to move onto the throne. As punishment, Barqūq whipped the two men an unspecified number of times and he beat the woman about 600 times with a staff. He then ordered that they be nailed to a wooden cross (*tasmīr*), placed on a camel, and paraded around in public.[4] As al-Maqrīzī reported, it was an infamous day and people cried for the woman because of her punishment—paraded on a camel with her arms spread out, nailed to wood, wearing her mantle (*izār*) and veil (*niqāb*).[5] This was the first time a woman had been punished in this manner and people were shocked. As they were

[1] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:361–364; Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr*, 1:198–199; Ibn Taghrībirdī, *al-Nujūm al-zāhira*, 11:172. This is one of the few cases in this book that have been discussed at some length in secondary literature. Petry, "The Hoax of the Miraculous Speaking Wall," which includes a discussion of the differences among the three accounts.

[2] Part of the wall had possibly been quickly rebuilt.

[3] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:362–363.

[4] Ibid., 3:362–363.

[5] For definitions of *izār* and *niqāb* as applied to women in the Mamluk period, see Stillman, "Female Attire of Medieval Egypt," 46–50, 175–178.

being paraded about, the *muḥtasib* descended from the Citadel with a robe of honor presented to him by Barqūq.[6]

What was the wrongdoing here? No agreed-upon doctrinal rules that the *muḥtasib* might have found prohibit a wife from tricking her husband into resuming conjugal relations or proscribe talking from behind a wall. The problem developed when people began flocking to the wall, making it into a shrine, and creating a challenge to public order generally.[7] The *muḥtasib* manuals do not discuss what the official should do in the event of general threats to public order, because typically protection of order is considered a question for the ruler to determine, a matter of pure policy, such as an invasion by a foreign power. Here, the *muḥtasib* chose to investigate to the point of identifying the culprits.

His personal involvement is best explained by his own background and career; a different *muḥtasib* might have chosen to let an official such as the *wālī* undertake the investigation. The talking-wall episode took place during Jamāl al-Dīn's second of four terms as the *muḥtasib* of Cairo. He came from obscure origins and throughout his career advanced from position to position to finally become Egypt's chief Ḥanafī judge in 793/1391.[8] At the time of the talking wall, he was already climbing the ladder of the system that would ultimately reward him well (although he was not yet a judge, as he called himself in this event). One particular amir, who was in the process of gaining political power within the inner circle surrounding the sultan, was the comptroller (*nāẓir*) of the Manṣūrī hospital, a prestigious and potentially lucrative administrative position, and Jamāl al-Dīn was his assistant.[9] Involvement at this level of politics, however, had its disadvantages. Shortly after the talking-wall episode, Jamāl al-Dīn angered the very Barqūq who had honored him for solving the case and Jamāl al-Dīn's patron-amir also became embroiled in a dispute with Barqūq, leaving him unprotected. Jamāl al-Dīn spent some time in prison but ultimately his political savvy returned him to service.[10]

Jamāl al-Dīn seemed eager to prove that he was capable of solving the talking-wall case, and once he had done so, he took the three perpetrators to Barqūq for punishment. Usually, *muḥtasib*s or the accompanying *wālī*s carried out the remedy or punishment themselves, as seen in the previous cases. But the wrongdoing here stands out for its uniqueness, and nothing in the manuals prepared the *muḥtasib* for handling it. The *muḥtasib* could have acted on the sultan's behalf—he was his appointee, after all—but the case was so odd that he probably did not know what punishment was appropriate. This seems to have been a case of policy-based punishment, punishment *siyāsatan*, which was a prerogative of the ruler to determine. Policy-based punishments typically also have the goal of restoring public order and deterring future breaches by displaying publicly the consequences suffered by the violator.

[6] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:363–364.
[7] According to Carl Petry, it was the "massive public fraud" aspect that was considered objectionable. Petry, "The Hoax of the Miraculous Speaking Wall," 94.
[8] Al-Maqrīzī, *Kitāb al-Sulūk*, 3:744; see his biography in Chapter 2.
[9] Ibid., 3:335.
[10] Ibid., 3:383; Ibn Ḥajar al-ʿAsqalānī, *al-Durar al-kāmina*, 5:105.

Indeed, Barqūq ordered a severe punishment, *tasmīr*, which conveyed publicly the message that social unrest was taken seriously. Barqūq's statement was powerful: he was on his way up the ranks to the office of sultan and would not tolerate a threat to stability. *Tasmīr* could result in death, although it was not explicitly a mode of execution.[11] The people who witnessed the punishment may have been comforted by the fact that the sultan was in control of the situation, and that no supernatural force threatened them. If they were reassured, however, they also expressed their shock about the means of punishment, especially the harsh treatment of the woman. While this case dealt with highly unusual threats posed by three individuals, often the sultan perceived challenges from larger and more conventional sources, as will be seen in the next case.

Case 9.2. A boycott in the markets

In 746/1345, when young Sultan al-Ṣāliḥ Ismāʿīl became ill, rumors circulated about his health, and the merchants closed their shops so that no commercial transactions could take place. Along with the *muḥtasib* of Cairo, Ḍiyāʾ al-Dīn, the *wālī* went out and beat a group of merchants and paraded them around ignominiously (*tashhīr*), denouncing them for shutting their places of business.[12]

The chronicles show that in times of political or economic uncertainty, merchants sometimes responded by closing their doors. In Case 7.8, for example, they did so in response to a new round of price-setting. When struggles among factions of amirs seemed imminent, they seem to have feared that violence in the streets would lead to looting and other dangers to themselves and their goods. In the current case the merchants seem to have anticipated that when the sultan died, a conflict among possible successors would erupt, making the streets and markets unsafe. Sultan al-Ṣāliḥ Ismāʿīl was a son of al-Nāṣir Muḥammad (d. 1341), who was followed in quick succession by at least eight sons, two grandsons, and two great-grandsons, most of whom were minors and were actually controlled by rival factions of amirs.[13]

The merchants were justifiably nervous at the prospect of the sultan's death, and simply closing their shops for the day, or a few days if needed, seems like an innocuous reaction. Why, then, did the *muḥtasib* and *wālī* denounce this behavior, and subject some merchants to *tashhīr*, making examples out of them for all to see? Doctrinal rules do not address the issues of the closing and opening of the market; they do cover food hoarding, discussed in detail in Chapter 7, but the general question of when markets should stay open is not specifically provided for in *fiqh*. However, from the sultan's perspective, closed markets threatened the stability of his regime, psychologically and economically, and that was all the cause he needed in order to prompt his officials to act.

[11] See discussion of *tasmīr* in Case 7.6.

[12] Al-Maqrīzī, *Kitāb al-Sulūk*, 2:677. Sultan al-Ṣāliḥ Ismāʿīl was the fourth of the sons of al-Nāṣir Muḥammad to rule in fairly quick succession.

[13] Northrup, "The Baḥrī Mamlūk Sultanate, 1250–1390," 287.

Maintaining open markets was a policy concern for a number of reasons. As seen in the discussions of availability and pricing of bread, providing an adequate supply of basic food was essential to prevent a downward spiral of hunger, anger, and unrest. From the perspective of the average person in Cairo, turbulence in the markets meant that prices would increase and food would become scarce. Closed markets were also damaging to the reigning sultan because they were essentially a prediction by the merchants that the sultan did not have long to live and an implicit call for the rival amirs to line up their candidates for the throne. Even if the sultan survived that particular moment, his challengers would be ready and waiting for the next sign of illness or weakness. The punishment of publicly beating merchants and parading them around was intended to show the people that the sultan was indeed in command of the city and that he would not let the merchants deny them their daily needs. It also served the purpose of warning merchants who might attempt to keep their shops closed of what to expect in terms of punishment.

This case is one of pure policy and broad use of force. The participation of the *wālī* suggests that the raids required a powerful figure, and although he and the *muḥtasib* both undertook to physically attack the merchants who had closed their shops, this is, in fact, the type of action to be expected from a *wālī* and one that a *wālī* undertook on many occasions without the participation of a *muḥtasib*. These actions required no legal knowledge and no credentials other than the ability to use a whip. In the talking-wall case, in contrast, the *muḥtasib* carefully investigated the problem over the course of many days, determining even the woman's initial motivations for making her voice appear to come from a wall. The sultan punished the three harshly, but no one attempted to punish summarily the crowds who gathered at the wall. In the present case, the merchants did not have a chance to explain or to offer a reason for closing, and a blanket approach was applied to all of them. In earlier cases, the overlap between doctrinal interests and the sultan's policy interests proved large, such as regarding the permissibility of setting prices or subjecting property to the *zakāt* tax, and that intersection could create tension in determining how to handle the situation. In the present case, however, the field of regulation was wide open for the policy-based power of the sultan to fill.

Case 9.3. Thefts as threat to public order

In 911/1505, at the end of the Mamluk period, a group of boys plundered a number of shops in the central Cairo commercial district, from Bāb al-Naṣr in the north to Bāb Zuwayla in the south (see Map 2.1), and Cairo was on the verge of a crisis as a result. The goods and fabric stolen were worth about 500 *dīnār*s. The merchants sought help from Sultan al-Ghawrī, who was greatly disturbed by the news. He reprimanded al-Jamālī Yūsuf, who was a sort of assistant *wālī* for that part of Cairo, and told him to find the boys who committed the act and deliver them to him. Al-Jamālī Yūsuf and al-Zaynī Barakāt, the *muḥtasib* of Cairo, then went together to determine what had been taken and to return it to its rightful owners. They captured some of the thieves and

took them directly to the sultan, who ordered that four of them be hanged and the rest flogged with whips.[14]

The *muḥtasib* al-Zaynī Barakāt was not even tasked specifically by the sultan, and yet he joined al-Jamālī Yūsuf as if it were so obvious that he would do so that it did not require comment. As we have seen, al-Zaynī Barakāt was a civilian *muḥtasib* who was clever, forceful, and a consummate survivor. He was appointed in 910/1505 and served in the position with few interruptions for the remainder of the Mamluk period and even after the arrival of the Ottomans.[15] At the time of this event, Barakāt was still fairly new in the position, but he already seems to have become an integral part of the sultan's investigatory and punitive apparatus. And once the *muḥtasib* and the *wālī* had captured the boys, they dutifully brought them to the sultan.

The events were depicted in this chronicle report as plunder (*nahb*); the term for the *ḥadd* crime of theft (*sariqa*) was not used, and the distinction is significant. The elements of the *ḥadd* crime include the requirements that a person of legal capacity take goods of a minimum specified value from a place of safekeeping (*ḥirz*), and if proven by a confession or two witnesses, the penalty is generally the amputation of the right hand.[16] According to most jurists, a place of safekeeping means a place where items of value are normally kept in order to be protected.[17] And while the jurists also generally agreed that the items must have a minimum value, they disagreed about the precise value due to different *ḥadīth*s on the topic. Differing minimum amounts that the jurists have adopted include, for example, three *dirham*s, one-fourth of a gold *dīnār*, ten *dirham*s, and the value of a shield, which may be equal to one of the aforementioned amounts.[18] The jurists also considered how the minimum value should be applied to a group of thieves—do they each have to take property that meets the minimum, or is their joint participation in the theft of the minimum value sufficient?

Judges had jurisdiction over *ḥadd* crimes, and if convicted, the judge would typically turn the perpetrator over to an official of the ruler to carry out the penalty. Here, we have no evidence of any consideration of the events as a possible *ḥadd* crime; this was treated otherwise from the outset. The *muḥtasib* and al-Jamālī Yūsuf brought the captured boys directly to the sultan. No other option was really a possibility, since the sultan had instructed that they be delivered to him. Disobeying the sultan and turning over the suspects to a judicial forum would have been a poor choice for two officials who wanted to maintain their good standing

[14] Ibn Iyās, *Badā'iʿ al-zuhūr*, 4:86. Al-Jamālī Yūsuf later became *muḥtasib* when the sultan briefly replaced al-Zaynī Barakāt in 914/1509.

[15] See his biography in Chapter 2.

[16] Ibn Rushd, *Bidāyat al-mujtahid*, 2:795–797; Peters, *Crime and Punishment in Islamic Law*, 56. The source for the penalty is Q 5:38–39: "Now as for the man who steals and the woman who steals, cut off the hand of either of them in requital for what they have wrought, as a deterrent ordained by God: for God is almighty, wise. But as for him who repents after having thus done wrong, and makes amends, behold, God will accept his repentance: verily, God is much-forgiving, a dispenser of grace." (Muḥammad Asad, trans.)

[17] Ibn Rushd, *Bidāyat al-mujtahid*, 2:797.

[18] Ibid., 2:795–798.

with the sultan. Whether this act could have been a *ḥadd* crime seemed irrelevant to the sultan—the boys threatened social stability with their action, a direct affront to the sultan's authority, and he apparently wanted to deal with them in the manner he saw most appropriate, which was to hang four of them and flog the rest with whips. For the boys who were executed by hanging, their punishment was far worse than the *ḥadd* penalty would have been had they been convicted of theft.

Jurists tried to delineate the boundaries between *ḥadd* punishments and discretionary *taʿzīr* punishments. As discussed briefly in Chapter 2, most concluded that punishment for a discretionary wrong should not exceed the lowest *ḥadd* penalty, although they disagreed about how to quantify that rule. Some argued that the *taʿzīr* maximum should be 79 lashes, since 80 lashes is given to a free person who drinks *khamr*, while others referred to a *ḥadīth* that provides a maximum of ten lashes for a non-*ḥadd* offense. The Mālikīs, however, did not prescribe a maximum *taʿzīr* penalty—not for lashings, and, seemingly, not for punishment in general. This view gives the ruler substantial discretion in determining what punishment to mete out under the heading of *taʿzīr*, but execution was a grave matter. The Mālikīs were willing to consider it acceptable for very serious crimes that threatened social stability.[19] And even the other schools, while maintaining lashing limits, accepted execution for the most serious offenses (that were, of course, not otherwise covered by *ḥadd*), such as "manslaughter (if no sentence for retaliation [*qiṣāṣ*] could be issued), spying for the enemy, spreading heresies, homosexual acts, and sorcery."[20]

How serious was the plundering? The report does not specify whether this was a one-time raid through the city, although that is implied, and, in any case, we are told that it pushed Cairo to the edge of crisis. The sultan seems to have viewed the boys as essentially taunting him, suggesting that he could not keep control in his own capital even when he was present. For the sultan, apparently, the penalty was appropriate for the crime, and his actions could be described as intensifying a *taʿzīr* punishment through his power of *siyāsa*. If there were jurists who objected in this case, however, their voices were not recorded in the chronicles. They may have come to accept that the sultan was acting with at least some doctrinal support and that they should defer to his choices when he asserted jurisdiction over wrongful acts with a public dimension like these.

Conclusions

The sultan played a key role in each of these cases, which involved broad policy concerns that transcended particular rules of doctrine. In the talking-wall case, the *muḥtasib* led the investigation, but once he determined who the culprits were, he turned them over to the sultan for punishment. A *muḥtasib* could have punished the offenders for these wrongful acts himself, since he possessed the sultan's power of policy-based punishment that could be invoked when the actions caused a threat

[19] Fadel, "Adjudication in the Mālikī *Madhhab*," 97.
[20] Peters, *Crime and Punishment in Islamic Law*, 67.

to social order, even when it would be difficult to find a precise doctrinal prohibition against the particular act. Here, though, the sultan seems to have wanted to deal with the trio himself, perhaps in the belief that publicly punishing them and thereby restoring the social order that they had breached had to come from the highest level in order to be most effective. Likewise, in the case of the market plundering that drove Cairenes to the verge of crisis, the *muḥtasib* helped to apprehend the boys, but the sultan personally determined the punishment of hanging for some and lashings for others; the hangings were likely done in public to achieve the maximum impact, both on those who wanted to be reassured that the city was safe and on anyone who contemplated a similar crime.

The sultan also played a central role in the second case, although in an opposite sense from the other two. In Case 9.2, the sultan could not restore order himself, since his ill health was itself the reason for the crisis and the closing of the market shops; his own appearance could have made the situation worse. The *muḥtasib* and *wālī* fulfilled the crucial role of trying to re-establish normalcy at a time when indicators pointed to yet another struggle for the throne, and through whippings and ignominious parading of merchants, they made their point that, at least for the time being, no actions suggesting panic would be tolerated. Here again, the goal of social stability directed the course of events.

None of the participants in any of these cases was willing or able to resist the *muḥtasib* (or the *wālī*, in the second and third cases). Only in Case 9.1, where people who were intrigued by the wall continued to visit it, was there any sense of defiance of authority. But even there, the *muḥtasib* did not tell people to stay away, or try to cordon off the area around the wall. His focus remained on detecting what he correctly thought was a ruse of some kind. Nothing about possible resistance from the merchants who closed their shops or the boys who plundered the markets was noted. As far as was reported, the merchants did not attempt to argue that they had violated no doctrinal rule by closing their shops. Nor do we know whether the plundering boys offered a defense or even whether they had the opportunity to do so. Although a tension between *fiqh* and *siyāsa* could have arisen in these cases, there is no sense that it did.

If promoting social welfare was the intended goal of these investigations and punishments, there was certainly some success, leaving aside the question of whether the same results could have been achieved by lesser penalties. The talking wall created fears among the people, and one chronicler reported that civil unrest was developing. Showing people that indeed the voice was from a human put fears to rest and allowed everyone to return home reassured, although the punishment of the tricksters, and the woman in particular, seems to have been shocking on its own. When merchants closed their shops, the average person who needed to make daily purchases had cause for concern. Those with some means could stockpile what they needed, such as wheat, as discussed in Chapter 7, but most people purchased food and goods as needed. Further, since few had ovens or stoves at home, they needed to buy their bread and other precooked food in the market and could not tolerate a closed market for long. Finally, the capture of the plunderers reassured merchants and shoppers alike that the markets were again safe places.

In these areas, legal doctrine provided little guidance to the *muḥtasib*, nor did the manuals cover topics such as a widespread market boycott or a talking wall. The *muḥtasib*s took their instructions from the sultans and were also guided in part by the actions of the *wālī*s who accompanied them. Only in the theft case was there the possibility of a doctrinal issue, but it is impossible to know what might have happened had the *muḥtasib* turned the boys over to a judge instead of the sultan. According to the manuals, the *muḥtasib*s were not supposed to ignore *ḥadd* crimes altogether simply because they did not have the authority to adjudicate them. But when the sultan asserted that he wanted to deal with the perpetrators in his own way, both in the talking-wall case and the theft case, the *muḥtasib* deferred to his commands.

Conclusions

This study of the practice of the *muḥtasib*s of Cairo and Fustat in the Mamluk period now allows us to come to conclusions on three levels, beginning with new understandings of the position of *muḥtasib* in the Mamluk era, including the kinds of individuals who held it, the sources of their authority, the full expanse of their activities, and the ways that they interacted with the people they regulated. Secondly, we can draw some conclusions about methodology, identifying key aspects of this study that can be carried into future research in pursuit of an understanding of Islamic law in action. Further broadening from future studies to the world around us, this study also contributes to our efforts to understand the practice of Islamic law today and in particular how the central issues in this historical study can be used to inform contemporary discussions.

The *muḥtasib*s of Cairo and Fustat were a diverse group of individuals, but they shared certain characteristics. They were male Muslims, appointed by the sultan, and they served as long as he was pleased with them; dismissal could come without warning and was often triggered by the *muḥtasib*'s inability to deal with a pressing problem, such as prices or the availability of food. The type of person who served as *muḥtasib* changed over the course of the Mamluk period. While initially the position was held by either individuals who could be considered jurists (or at least had some educational background in Islamic law) or individuals with administrative experience in other aspects of the sultanate, over time the jurist-*muḥtasib* faded and even the administrator-*muḥtasib* was overshadowed by those with strong connections to the sultan or high-ranking amirs and, especially in the final century, by amirs themselves. The compensation system may have been one cause of this change, since the skills needed for the task of pressuring merchants to make payments might better be found in an amir than a jurist, and the sultan's increasing reliance on the *muḥtasib* as a revenue-raiser for the sultanate likely influenced his selection.

In office, the *muḥtasib* took action in such a wide range of substantive areas that no aspect of public behavior seemed to escape his regulation. The chroniclers kept a record of events that they knew or had learned about, and it surely was the case that many more events involving the *muḥtasib* took place on a daily basis, far beyond what has been preserved. Now that we have a good sense of the broad parameters of the official's actions, we are left to imagine the additional cases under each topic heading that must have taken place.

What the sources do tell us is that the *muḥtasib*s intervened to issue commands in matters of preaching, prayer (and the call to it by the muezzin), and fasting. They tried to prevent or at least minimize behavior that veered towards some of the most serious wrongs in *fiqh*—consumption of intoxicants and fornication, for example—as well as less significant wrongs, such as the gambling games of young boys and the behavior of the female campers, the latter of which was problematic mainly insofar as it could lead to something worse. The *muḥtasib*s' regulations of Christians and Jews included their public dress and demeanor, employment in the sultanate, and payment of the *jizya* tax. The *muḥtasib* was very active in the area of market regulation, and this concentration explains in part why the name is often translated as "market regulator" in English (although it does not capture the full range of the official's activities). The particular areas of grain, wheat, and bread demanded extensive attention by the *muḥtasib*s, and regulation of these products posed some of the most difficult situations, with profound effects on society as a whole. The *muḥtasib* was involved in new issuances of coins, not in the sense of deciding when to produce them, which was the sultan's prerogative, but by announcing the sultan's rules under which the new coins would be traded. The *muḥtasib* also helped the sultan collect taxes in certain cases although not systematically. Finally, the *muḥtasib*s' actions to promote and restore public order complete the full range of the areas of regulation.

Encounters with the *muḥtasib* could produce welcome benefits for the inhabitants of Cairo and Fustat, but sometimes the official met resistance, and even though he was backed by the power of the sultanate, people did not always obey him unquestioningly. Although the common people had less power to confront the *muḥtasib* than did amirs or other officials, on several occasions they did attack the *muḥtasib* directly over food shortages and high prices. More generally, they engaged in what can be called passive resistance by simply refusing to comply, and the most significant examples of this came from women and religious minorities. These cases even involved what seemed to be a strategic calculation by the individuals regulated about how determined a particular *muḥtasib* was to enforce a given rule, and for how long.

The *muḥtasib*s were guided by two main sources of authority: *fiqh* and *siyāsa*. The content of right and wrong came in large part from the jurists, making their works an important source for the *muḥtasib*, although many of the *muḥtasib*s would have found *fiqh* texts difficult to use as a form of practical legal guidance. To narrow the rules of *fiqh* to what was essential (and in general agreed upon) and to guide the officials in their work more generally, a genre of manuals developed. The relevance of the rules of *fiqh* (and these rules as expressed in the manuals) appears clearly in much of what the official did (even as the rules did not anticipate the specific contexts and consequences of their application). Many concerns of the *muḥtasib*s correlate directly to such rules, including the prohibition on gambling, the impermissibility of a Muslim possessing wine, the stipulations of the Pact of ʿUmar, the requirement of covering one's *ʿawra* in the bathhouse, the prohibition on the consumption of carrion, and the requirement to measure properly and fully all goods in sales transactions. The *muḥtasib*s in these cases may

have learned the rules of *fiqh* from their personal education, from the manuals, or from generally prevailing notions of law. The reference by a *wālī* to "God's price" in Case 7.5 suggests a widespread familiarity with the general rule prohibiting price-setting (and the *ḥadīth* upon which that rule is based that refers to God as the only one who may set prices).

The rules of *fiqh* were not predictive of the outcomes even in the cases where they were relevant, however, because their implementation depended on discretionary choices. Why the *muḥtasib* sent scholars out to the markets to teach merchants how to pray cannot be understood from the general rules on prayer, for there is nothing internal to the rules that would explain why merchants should have had to pay at that particular historical moment for prayer lessons that they may not even have needed. Nor can the *muḥtasib*'s treatment of prostitutes be understood simply from the *fiqh* rules that prohibit fornication (and even consider it a *ḥadd* crime depending on the evidence); he must have known that it was a wrongful act from *fiqh*, but how he handled the situation depended on the social context of the plague, the taxation system of the sultanate, and even his own experience in office.

The sultan's *siyāsa* power, associated with the concept of public interest, formed the *muḥtasib*'s second source of authority. This source did not come with an extensive body of literature, and in fact little written record remains of sultanic policies or orders for the *muḥtasib*, aside from the appointment documents and chronicle reports. There is no equivalent of *uṣūl al-fiqh* (jurisprudence, literally roots of *fiqh*) for *siyāsa*, and the rulers themselves to our knowledge did not elaborate written theories of how to carry out their *siyāsa* power, although some jurists did attempt to sketch out, descriptively and normatively, constitutional structures of authority. While the *muḥtasib*, along with the sultan, was supposed to determine and be guided by what served the public interest, in some cases they fell short of this aim. The cause of such a failure to improve the public welfare was, in some cases, a well-intentioned but misguided effort, such as lowering the price of bread without regard for the larger market forces involved in its production, thereby provoking a larger bread crisis. The sultan's efforts to extract revenue from merchants could be considered necessary for public welfare, if the defense of the sultanate from invaders depended upon it, but in some cases the sultan's desire for revenue seemed unlimited and unbounded by specific, tangible social needs.

In many cases, the considerations of *fiqh* and *siyāsa* could both be satisfied. But what happened when the sultan's policy demands could be challenged on *fiqh* grounds? A few cases involved an individual contesting the *muḥtasib*'s actions for apparently these reasons, such as the chief judge who opposed the collection of *zakāt* (in the account of Ibn al-Furāt) and the *muḥtasib* who refused to impose forced sales on merchants (although his objection seemed largely practical). There is no record of laypeople attempting to argue on *fiqh* grounds, however. Perhaps merchants did not know the detailed *fiqh* rules of price-setting and thus could not formulate a doctrinal response when it was imposed upon them, or perhaps they knew the basic rules but had developed a good sense of when the sultan or *muḥtasib* could be challenged and for what reason and when such an effort would be futile.

In addition to these two sources of authority, the *muḥtasib*s relied upon their own senses of discretion, deciding, for example, when to send an assistant to investigate an event and when to handle a matter personally. Geography played some role in the cases; it may have taken some time before the *muḥtasib* responded to a new market on the edge of town, while he reacted promptly to a storehouse full of rotting birds located not far from his own stand. Discretion could be exercised in ways designed to personally advance the *muḥtasib*, although not necessarily to the detriment of those he regulated. A *muḥtasib* who tried to distinguish himself in the face of a challenger seems to have benefited the people, while *muḥtasib*s trying to raise the funds they owed the sultan probably caused consumers to pay more for their purchases.

*Muḥtasib*s had tremendous discretion in the area of punishment. They decided how and when to punish, acting under the broad heading of *taʿzīr* that depends in its specifics on contextual factors, including the identity of the perpetrator, the person harmed (such as the consumer), and the details of the wrongdoing. The *muḥtasib* might merely require that the impermissible activities (such as hashish consumption and prostitution) move out of public view. One *muḥtasib* sent women home when they were mixing with men in public; a different use of discretion could have sent the men away instead. And the *muḥtasib* might engage in severe corporal punishment, such as beating and lashing, or a combination of corporal punishment and public humiliation, such as parading the perpetrator ignominiously through town.

Moving beyond the specific context of the *muḥtasib* in the Mamluk period to Islamic legal studies more generally, this book suggests several methodological conclusions centered on issues of authority, discretion, and experiences that can help to guide future historical work. The broad issue of authority is an essential one, and needs to be explored from many angles: who decides what rules should be imposed on society; to what sources of authority do those decision-makers turn; and who implements those rules?

First, who claims legal authority? Once identified, we need to know their backgrounds and presuppositions, whether jurist, judge, mufti, or other official. How did they get appointed, and what other positions did they hold? While it is often difficult to gain this kind of information, it should be an important aspiration. Looking to legal actors such as the *muḥtasib* can help us approach this question from different angles and take advantage of the full range of available sources.

The second question—the sources of authority to which a legal actor turns when making a decision—is, in a narrow sense, the basic question of a jurist's interpretive process. In this study I have, however, been interested in the broader issue of conceptual authority, and *fiqh* and *siyāsa* in particular.[1] The English-language terminology can work against our efforts here, however, since both *fiqh* and Sharia

[1] While custom is also an important source of authority, the sources for this study did not allow for an investigation of the role of custom in the *muḥtasib*'s actions. Future work will hopefully identify ways to study this topic.

are usually translated as "Islamic law," with the implication that they both mean legal doctrine.[2] We need to explore ways to study the breadth of the concept of Sharia to assess when *siyāsa* has been considered part of the broad notion of Sharia and when, and by whom, *siyāsa*-based actions were considered to fall outside the Sharia.

And, finally, under the heading of authority, who implements these rules? The official who comes into direct contact with people in the process of applying law creates a dynamic site of interaction. This point of contact may be the judge reaching a judicial determination, or the official who carries out the judgment. For example, who makes sure that the losing party pays the debt owed, or performs the obligations imposed upon him, and what kind of coercion is brought to bear, and by whom, on the recalcitrant party? Does the enforcing official have any discretion, and if so, how is it exercised?

The second broad methodological conclusion comes from the crucial role of discretion at every step of the law formation and application process. In this study, the exercise of discretion by the *muḥtasib* and others was often quite visible, and the sources allowed for speculations and, at times, even firm conclusions about the factors that influenced the *muḥtasib*. Choices about how to use the power of *siyāsa* are inherently discretionary, but, once examined closely, so are choices about the use of *fiqh*. Jurists clearly recognized that the process of interpreting the source texts yielded in most cases multiple results, and that these differences were due in part to juristic preferences of methodology. But surely many contextual factors external to the texts also affected jurists, and we need to try to better identify and understand these dynamics. We have some evidence that juristic interpretation was affected by social context and needs, and further work in this area will certainly be very profitable. Beyond the level of rule formulation, a whole new level of dynamics of discretion comes into play when we discuss choices of how to actually use and implement those rules.

Finally, we need to pay careful attention to how individuals experience the exercise of authority and discretion, and by this I mean the ways that the legal official interacts with those he intends to regulate and how they respond. This aspect is often neglected in historical Islamic legal studies, in part due to the lack of sources, but there also is a notion that what happens after a rule is formed is a separate and distinct level of inquiry that does not affect the production of the rule itself. The two can be intertwined, this study has shown, such that the state of the rule itself can be a combination of text and practice. The sartorial and behavioral requirements for the Christians and Jews discussed in this book provide a good example. Through a pattern of repeated practice, the rules shifted from a set of

[2] For modern implications of this conflation, see Quraishi, "What if Sharia Weren't the Enemy?"

generally applicable requirements to a modified version, applied only when some stress on the sultanate caused a need for the perception of enforcement, and that modification seems to have been understood and accepted widely.

These methodological conclusions lead directly to the larger topic of examining the practice of Islamic law today. Each of these concepts of authority, discretion, and experiences is a useful point of inquiry not only for historical studies but also for approaching the dynamics of Islamic law in the modern period and, in particular, for considering how understandings of the past are used in the present. Some modern nations have instituted an official who is either called the *muḥtasib* or tasked with "commanding right and forbidding wrong," and these modern versions of the *muḥtasib* deserve detailed investigation along the lines used in this study.[3] Further, these three concepts are important ways to think about any exercise of Islamic law in the modern period, by any actor claiming the right and ability to do so.

An examination of any claim to Islamic legal authority, whether by executive, legislative, judicial, or other state or independent body or person, should begin with basic questions: Who is claiming authority to determine and apply Islamic law, and on what basis? Do these actors present rules as being derived from *fiqh*? Is there room for the exercise of the ruler's *siyāsa* power? Do the actors acknowledge the many points in the process at which they drew upon their own sense of discretion, and are they forthright in explaining not only those choices but also their own presuppositions and biases that inevitably became part of the decision-making process?[4]

To take one example, modern proponents of the application of Islamic law often equate Islamic law with *fiqh*, rely on their choices of *fiqh* rules to prepare legislation, and then present the result in such a way that any criticism is deflected as a critique of God's law. Likewise, critics of the role of Islamic law in contemporary contexts also typically point to particular *fiqh* rules that are incompatible with modern notions of non-discrimination and human rights, such as *ḥadd* crimes and rules for non-Muslims, and on this basis reject any place for Islamic law in modern society. The problem with both approaches is that they focus on *fiqh* exclusively, and neglect the actual practice of law, the role of discretion by legal officials, and, most significantly, the major role played by the ruler as a function of *siyāsa*. Further, *fiqh*-based arguments often involve a claim to historical authenticity, a suggestion that society used to be ordered according to *fiqh* rules and that a true modern Islamic society should simply revive them. An imagined scenario in which *fiqh* reigned supreme and text equaled action skews our understanding of the past and the ways in which the past can help inform the present.

The *fiqh-siyāsa* framework can be helpful in examining the issue of sources of authority for Islamic law in modern states. The historical power of *fiqh* (and the

[3] See Vogel, "The Public and Private in Saudi Arabia," 758.

[4] These kinds of questions of legal authority are central to *Speaking in God's Name: Islamic Law, Authority, and Women*, in which Khaled Abou El Fadl confronts directly "authoritarian methodologies" for "erod[ing] the effectiveness and dynamism of Islamic law." Abou El Fadl, *Speaking in God's Name*, 6. His study is based in part upon fatwas from contemporary well-known jurists in the Arabic-speaking world and from the Permanent Council for Scientific Research and Legal Opinions in Saudi Arabia.

jurists who produced it) has been greatly diminished with the rise of modern nations and the codified laws that form the corpus of law in most parts of the Muslim world, along with the bureaucracies that implement them. And yet even with the power of the legislatures in making national law, jurists still play important roles in social governance. To a large extent they operate through state structures, such as al-Azhar University in Egypt and its associated research centers.[5] Modern rulers, now very typically strong executives, may be seen as exerting some kind of *siyāsa* power when it comes to incorporating Islamic legal content into national law (and in the exceptional case of Saudi Arabia, the two sources of authority of *fiqh* and *siyāsa* are clearly recognized and indeed form the constitutional structure of the state).[6] Modern states often undertake what might best be called the management of Islamic law, which typically involves making jurists part of the state bureaucracy and producing a vision of Islamic law suitable for the national context. In this sense, *siyāsa* power harnesses *fiqh* to its own advantage, just as the legislature might pick and choose between *fiqh* rules when deciding what to put into national law.[7]

The perceived historical strength of the jurists has relevance in the modern period to some, who see the structural balance of power between the rulers and the jurists as a model that could be adapted to address the contemporary problem of the authoritarian executive. The call for the implementation of Sharia in communities that hold such a historical view may thus be the call for some kind of counterweight to the executive's seemingly unlimited authority. Demands for the establishment of Islamic law, according to this line of analysis, are not calls for the return of the power of the jurists (and perhaps not even for the rules that they formulated), a practical impossibility, but rather are calls for new ways to check the power of the rulers, perhaps through national courts that would employ a form of Islamic judicial review.[8]

The exercise of discretion by actors claiming Islamic legal authority is also a significant issue in the modern context, but a forthright discussion of it by those actors is rare. Assumptions or assertions are often made that there is no room for discretion in matters of God's law, and that applying God's rules is a straightforward and objective process. But human choices are needed at every step of the process, including deciding which particular rule of a vast and diverse corpus of *fiqh* should be chosen, how the implementation will take place, who the enforcing officials will be and with what kinds of necessary qualifications, what the prosecutorial priorities will be, what general norms or cultural background assumptions will inform the work of the enforcing officials, what kinds of penalties or punish-

[5] See Zeghal, *Gardiens de l'Islam*.

[6] See Vogel, *Islamic Law and Legal System*.

[7] This is particularly true in the area of family law. In Egypt, the legislature and executive are subject to a check on the Islamic content of their laws and regulations in the form of judicial review by the Supreme Constitutional Court. In examining these rules for Islamic compliance, based on Article Two of the Egyptian constitution, the Court employs a test that is identical to the test that some classical jurists proposed as a limit on the power of the ruler. Vogel, "Conformity with Islamic Shari'a and Constitutionality under Article 2," 528–529.

[8] For this argument, see Feldman, *The Fall and Rise of the Islamic State*.

ments will be involved, and who will determine them and carry them out. Rather than attempting to hide the role of human discretion under the veneer of interpretive neutrality, discretionary factors should be identified and discussed as such.

In a modern context, decisions about and based upon discretion should be determined through public debates and legislative channels, guided by public interest and welfare, and not through the dictate of a ruler, jurist, or official. Choices about when, where, and how to use any law are human matters, in the past and in the present, and need to be recognized as such. In this regard, discussions today about the use of Islamic law might productively be framed in terms of public policy choices, debated according to what is in the best interest of any particular society, rather than as decisions presented as obligatory merely because a particular rule exists in the corpus of *fiqh*.[9]

The goal of investigating claims of authority and the exercise of discretion is ultimately a better understanding of how individuals are affected by law, whether in terms of socially prevailing notions that people choose to follow (or are pressured or persuaded to follow) or through rules that are imposed with the backing of the state. Strong assertions of authority, coupled with a denial of human agency and discretion, produce results that are difficult for individuals to resist or argue against and leave no room for debate. On the other hand, humility when making claims to authority, along with an admission that one's own context and biases, whether stated or even identified, play a large role in the process, can produce results that are open and subject to negotiation and that allow for a discussion of what rules and policies are best for that society. While the particular details of each context have to be examined, investigating the fundamental concepts of authority, discretion, and experience in any matter relating to the practice of Islamic law today should always prove to be a useful line of inquiry.

[9] Abdullahi an-Na'im argues that all discussions should be framed in terms of public welfare, and rejects the idea of Islamic law "enacted and enforced by the state as public law and public policy solely on the grounds that they are believed to be part of the Shari'a." An-Na'im, *Islam and the Secular State*, 1.

Glossary

The glossary includes (1) the significant Arabic terms that are presented in the text in transliterated form and (2) the anglicized Arabic terms that are presented in the text in their common English spelling. For the latter, the technical transliteration is also included here.

ahl al-dhimma	non-Muslims who were under the protection of the Muslims; Christians and Jews
ahrāʾ	grain storehouses
ʿāmil al-sūq	lit. guardian of the market, a term used for *muḥtasib*
amir	(*amīr*) commander; an officer of the sultan in several ranks commensurate with the size of his unit of soldiers. The *amīr kabīr* (grand amir) is the commander of the army
ʿāmma	the common people, often used in contrast to the social elite (*khāṣṣa*)
ʿarīf	an expert in a particular market craft or profession
awlād al-nās	sons of *mamlūk*s
ʿawra	the part of the body that should not be revealed to others; its precise definition depends on context
bidʿa	a belief or practice that was not acceptable or authorized in the time of the Prophet; innovation
dār al-ḥisba	the *muḥtasib*'s physical office; may be synonymous with *dikkat al-ḥisba*
dār al-islām	territory under Muslim control
dār al-ʿiyār	the office where standard measures were kept
dawābb	pack animals
dhimmī	a non-Muslim under the protection of the Muslims; a Jew or Christian
dhirāʿ, pl. adhruʿ	a unit of length equal to about half a meter; a cubit
dikkat al-ḥisba	the *muḥtasib*'s stand; also called *dikkat al-muḥtasib*
fals, pl. fulūs	a copper coin
faqīh, pl. fuqahāʾ	a jurist
fatwa	(*fatwā*) advisory legal opinion by a qualified jurist
fiqh	legal doctrine
fitna	civil unrest
ḥadd, pl. ḥudūd	a crime defined in the Quran that has an assigned, fixed penalty in the Quran or *sunna*
ḥadīth	a transmitted report of the Prophet's normative practice (by saying, action, or acquiescence); collectively, the Prophetic *sunna*

Ḥanafī	the adjective for the doctrine or follower of the Sunni school of law whose eponym was Abū Ḥanīfa
Ḥanbalī	the adjective for the doctrine or follower of the Sunni school of law whose eponym was Aḥmad b. Ḥanbal
ḥirz	place of safekeeping
ḥisba	the injunction to command right and forbid wrong as applied to any Muslim or to the appointed official, the *muḥtasib*, in particular
ʿibādāt	devotional practices; matters of worship
ʿīd al-aḍḥā	the holiday of sacrifice, which marks the end of the pilgrimage
ijtihād	an interpretive process whereby a rule is sought to govern a human action when no clear and definite text exists; deriving a new rule through analogical reasoning without any one conclusion precluding the possibility of others
imām	a leader, whether spiritual or temporal; a leader of prayer
iqṭāʿ	an allocation to an amir or other official of the products of a particular plot of agrarian land
irdabb	a dry unit of measurement used in particular for grain that is equivalent to about 90 liters; at the time of Ibn al-Rifʿa (d. 1310), one *irdabb* equaled 144 standard *mudd* measuring cups
istisqāʾ	lit. seeking water; the supplication for rain
jalājil	bells
jinnī, pl. jinn	an invisible supernatural being
jizya	the tax imposed on non-Muslims
kaffāra	expiation; an act required as atonement for a wrongdoing
kayl, pl. akyāl	a vessel for cubic measurement, something like a measuring cup
khamr, pl. khumūr	red grape wine; understood by most jurists to encompass all intoxicating substances
khānqāh-madrasa	a combination Sufi lodge and a madrasa
kunya	an honorific byname
lahw	play, in reference to games that do not involve the possibility of the loss of money or property
madhhab	lit. the path or way followed; as an intellectual school, a group of scholars loyal to the specific methodology worked out by the school and attributed to the school's eponym as well as to the doctrinal results of that methodology
madrasa	a college
makrūh	legally reprehensible; one of the five possible categories assigned to an act
maks	a tax other than a doctrinally prescribed tax
Mālikī	the adjective for the doctrine or follower of the Sunni school of law whose eponym was Mālik b. Anas
mamlūk	lit. owned; a slave soldier

maʿrūf	lit. recognized or known; that which is right
maṣlaḥa	public interest
maysir	games of chance, divided into *lahw* and *qimār*
mayta	carrion
maẓālim tribunal	a court of wrongs at which the sultan dispensed justice
mīzān, pl. mawāzīn	a scale; the classic *mīzān* is one in which the two sides are equal and the pans are balanced
mizr	an alcoholic beverage of fermented wheat or barley
mudd	a unit of measure, four of which equaled a *ṣāʿ*
muezzin	(*muʾadhdhin*) an announcer of prayers
mufti	(*muftī*) a jurist who provides authoritative answers (fatwas) to individual questioners or to judges who face complex legal issues in cases before them
muḥtasib	a legal official who was the regulator of markets and public spaces
mujtahid	a jurist qualified to conduct *ijtihād*
munkar	rejected; that which is wrong
mushāhara	a payment made by merchants to the *muḥtasib*, perhaps monthly as the term indicates
nahb	plunder (n.)
nāqūs	a wooden clapper, used in the place of bells in Christian churches
nāẓir al-aḥbās	a comptroller of trust properties
nāẓir al-ahrāʾ	a comptroller of the granaries
nāẓir al-awqāf	a comptroller of properties of pious endowments
nāẓir al-dawla	a comptroller of the financial bureaus
nāẓir al-jaysh	a comptroller of the army
nāẓir al-māristān	a comptroller of the hospital
niyāḥa	lit. wailing; vocal lamentation for the deceased
qabbān	a type of scale, called a steelyard or a Roman balance
qabbānī	a weigher who uses the *qabbān*
qāḍī	a judge
qāḍī ʿaskar	military judge
qāṣṣ	a storyteller
qimār	gambling; games that involve the possibility of the loss of money or property
qiṣāṣ	lit. retaliation; one possible penalty for wounding or homicide
qiyās	analogy (and related arguments); one of the four sources of Islamic law
qunūt	obedience and humility to God
rakʿa	a unit of prayer
raṭl	a unit of weight equal to 450 grams or about one U.S. pound

rimāya	a forced sale
ṣāʿ	a unit of measure equal to four *mudd*
ṣāḥib al-sūq	lit. guardian of the market; a term used for *muḥtasib*
al-salaf al-ṣāliḥ	the pious forefathers
ṣalb	also *taṣlīb*; crucifixion
sariqa	stealing; theft
Shāfiʿī	the adjective for the doctrine or follower of the Sunni school of law whose eponym was Muḥammad b. Idrīs al-Shāfiʿī
shurb al-khamr	the *ḥadd* crime of consuming wine (and, by extension, any intoxicating substance, according to most jurists)
ṣifāt	the attributes of God
siyāsa	policy, governance; policy-based decisions, associated with the ruler; one of the sources of authority for governance
siyāsatan	lit. punishment by *siyāsa*; policy-based punishment
Sufi	(*ṣūfī*) lit. wool; a mystic, adhering to the mystical trend of Islam
sūdān	lit. black people (referring to skin color); people from Nubia
sultan	(*sulṭān*) the designation given to the ruler in the Mamluk period
sunna	the normative practice of the Prophet; the second textual source of Islamic law
sūra	a chapter from the Quran
taqlīd	relying on another's opinion; acceptance of a legal school's doctrine as the starting point in legal interpretation without a need to confirm its correctness from the underlying proof texts
tashhīr	the punishment of parading a culprit through the town in disgrace; ignominious parading
tasmīr	the punishment of nailing to a wooden cross or pillory
taʿzīr	chastisement; discretionary punishment; any punishment that is not *ḥadd* or *kaffāra*
uṣūl al-fiqh	lit. roots of the *fiqh*; jurisprudence
wabāʾ	epidemic
wāʿiẓ, pl. wuʿʿāẓ	a preacher
wālī	a position that combines the tasks of governor and chief of police for a particular city
waqf	a pious endowment
zinā	unlawful sexual intercourse; one of the *ḥadd* offenses
zunnār	a distinctive belt that Christians promised to wear to distinguish themselves from Muslims at the time the Pact of ʿUmar was created

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